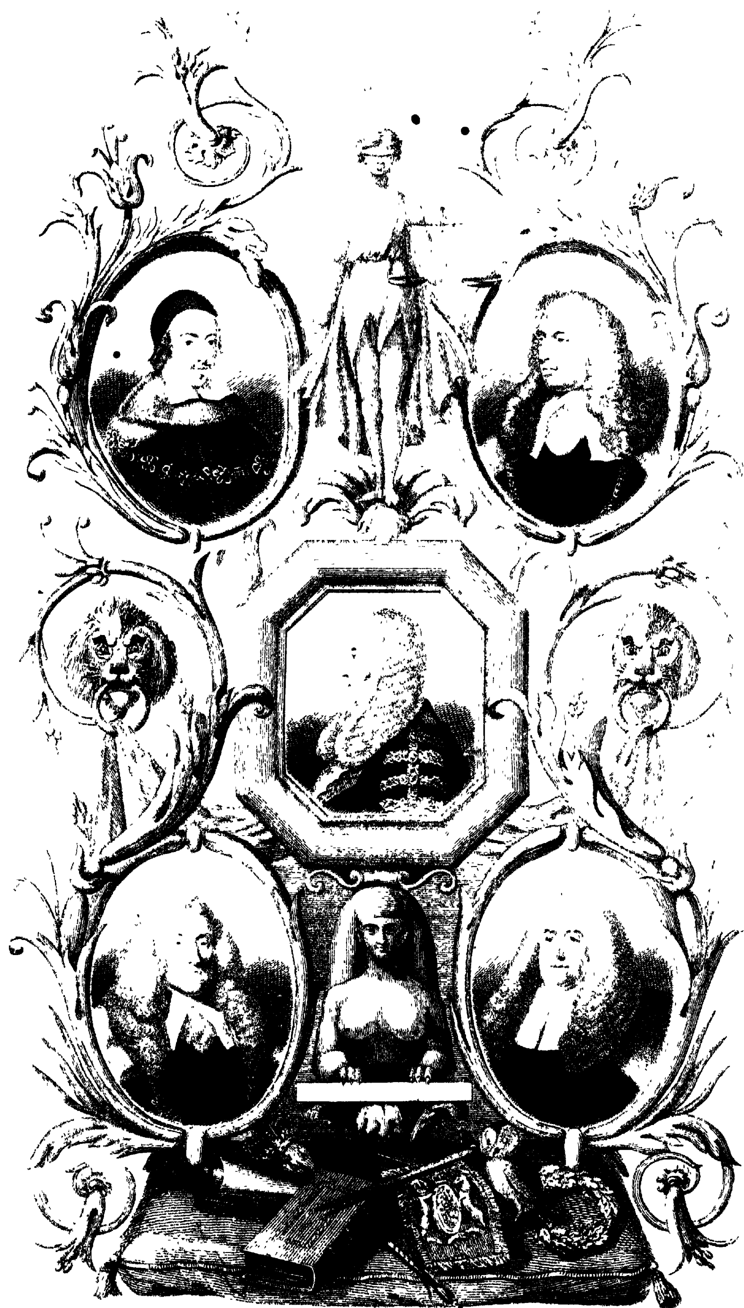


EVERY MAN HIS OWN ATTORNEY:

COMPRISING THE

Law of Landlord and Tenant,

THE BANKRUPT AND INSOLVENT LAWS,

THE LAW OF DEBTOR AND CREDITOR,

WITH

INSTRUCTIONS TO COMMENCE AND DEFEND ACTIONS IN PERSON, THE AMOUNT OF COSTS, OFFICERS' FEES, &c

THE LAW OF WILLS,

THE LAWS OF CRIMINAL JURISPRUDENCE, &c.

WITH AN APPENDIX,

CONTAINING ALL THE MODERN ALTERATIONS IN PRACTICE.

A NEW EDITION, REVISED, CORRECTED, AND ENLARGED,

By THOMAS JONATHAN WOOLER, Esq.

LONDON:
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1810.

PREFACE.

The best advice that could be given, if it could be followed, would be, to have nothing to do with Law; but as this is oftentimes unavoidable, the only way is to prepare to make the best of what circumstances may chance to occur.

The first point, in all books of instruction, should be—clearness; and those who possess knowledge will not find fault with a work for descending to minute particulars, when it is remembered that it is also designed for many who may be unacquainted with the subject on which it treats.

We do not propose to give a history of our laws, or to point out from whence they are derived, but to show the application of them in practice on the most generally important subjects. The mere knowledge of the laws is but of little advantage,—unless the reader is informed by what means he can obtain the benefit of them. It is useless to know the remedy, unless we also know how the remedy may be best applied.

What we profess to inform our readers of is—the present state of the Law of England, as it regards Landlord and Tenant, Bankrupts and Insolvents, and Arrests for and means of recovering Common Debts, and defending Common Actions; and on such subjects, parochial and others, as most individuals are brought into contact with, at some period or other of their lives, and upon which a certain degree of information is absolutely necessary. On these points we shall give ample information, not only of the law, but the method of enforcing it, and the

common practice in all cases bearing upon them;—so as to prevent, in many cases, the necessity of applying to an attorney; and giving such general information on the subject, that, in more complicated cases, where more important interests may be at stake, and where professional assistance may be absolutely necessary, parties may be able to keep a thorough watch over their own interests, and check and defeat any attempt to impose upon, neglect, or betray them.

When attorneys are employed, they must be paid; and their charges are not always regulated either by their abilities, or their services to a client, but by their own desire to make as much as they can. This evil can only be remedied by making their clients well informed on common subjects, and able to see what course they are taking in matters of more intricacy.

Much has been recently done, to simplify and harmonise the system of practice in the courts; something has been gained in point of expedition; but little, if anything, in the reduction of the *expense* of bringing and defending actions. Useless proceedings are still required, apparently for no other purpose than to extract money from the pockets of the unfortunate suitors. Forms, the pretences for which have been long exploded, are pertinaciously adhered to, merely because they are productive of emolument to the retainers of the courts;—and while this is the case, legal proceedings will remain characterised by an uncertainty of result, a loss of time, and a ruinous expense, which should induce every one to learn as effectually as possible to guard against a seduction into its labyrinths, or, if entangled in them, to make the most easy and expeditious escape.

THE LAW

OF

LANDLORD AND TENANT.

TENANTS.

THIS Work commences with the Law of Landlord and Tenant, because the first consideration of every man should be—his Home. This is a peculiar characteristic of Englishmen: where home is more endeared to the hearts than in any other country; for no language produces any word synonymous to that which strikes at once to the heart of every Briton. Home has no synonyme in any other tongue.

Whatever be the troubles, the annoyances, a man is doomed to encounter in his daily intercourse with society, he turns to his fireside with the anticipation of peace—of serenity; he feels his house is his castle, and that, when he has once passed that threshold, he is free. To make that retreat secure, to render home what its very name implies, the haven of our happiness, it is necessary that we know the laws by which tenancy is regulated in this country, that we may not infringe them;—that we may check the encroachments or misdoings of our landlords, if we be tenants; or, on the other hand, that we may do our duty and exact our rights, if we be landlords.

We commence with the commonest mode of tenancy—

LODGINGS.

A lodger, in the common course of tenancy, that is, one who takes apartments by the week or month, is not, in fact, a tenant contemplated by the law. "It is immaterial," says Blackstone, "whether tenancy be for a complete term

of a year, or a longer or shorter period; for, though it be for half a year, or a quarter, or any less time, it is respected as an estate for years." But the custom is, that the time for notice to quit shall be the same as the time for which the lodgings were taken; a week's notice for a week's taking, a month's for a month's, and so on:—and it has been determined in some recent cases, that lodgings taken for a quarter of a year, may be quitted on giving a quarter's notice; in these cases, the same rule applies both to landlord and tenant, as the termination of the tenancy must be equally in the power of both. A peculiar position was advanced in the case of Kemp and Derrett, where the Court held, that although, in a quarterly tenancy, a quarter's notice was sufficient, yet that quarter must expire at the identical period of the year at which it commenced; therefore, this taking must ultimately amount to a yearly tenancy.

In all cases, however, the common law and the custom too may be controlled by an agreement with the landlord, that a week's, month's, or quarter's notice (according as the term of holding may be,) given at any week, month, or quarter of the year, shall be accepted by him as good and sufficient notice. This agreement may be either made in writing, or verbally, but in the presence of witnesses. Written agreements are much to be preferred, and ought always to be adopted; for witnesses to verbal agreements are not always to be found when wanted, and they sometimes are unable to prove what is required of them; so that, to be quite safe, the agreement ought to be committed to paper.

Previous to signing any agreement, a lodger has several points to consider; for it is a general error to imagine that the landlord has more at stake, in receiving a bad tenant, than the tenant has to encounter in finding a bad landlord The goods of a lodger are liable for rent or taxes due from the landlord, even though such rent or taxes became due, previous to the lodger entering the house; it therefore behoves every man to inquire into the fact of the payment or non-payment of rent, &c. and no feeling of false delicacy should prevent this inquiry. An honest landlord can have no objection to produce his receipts; and if this became a general requisition by lodgers, it would tend greatly to the welfare of society in general; for, although the goods of a lodger so taken may sometimes be recovered by the writ of replevin, there is both trouble and expense in the process, which it is better to avoid.

Inquiries into the general character of your landlord ought likewise to be made, as there are a hundred cases in which, though pecuniary loss might not be sustained, a tenant might become annoyed or injured. The landlord might be under ejectment, (for the explanation of which see future pages,) and then a tenant would be liable to be removed or ousted, even though he had himself paid his rent, and done no wrong.

Having ascertained these points, the agreement may be safely entered into; and we shall now give copies of such forms as will enable our readers to frame them according to the circumstances in which they may be placed.

Agreement for Letting and Taking an apartment for One Week, and from thenceforth from Week to Week.

MEMORANDUM,—That it is hereby declared and agreed by and between James Western, of North-street, Red Lion-square, in the county of Middlesex, carpenter, and Joseph Glass, of No. 8, York-street, West Smithfield, in the same county, gentleman, in manner following: that is to say, that the said James Western hath agreed to let, and hereby doth let, and the said Joseph Glass hath agreed to take, and hereby doth take, all that the back room, being on the north side of the first floor of the house now in the occupation of the said James Western, situate in North-street aforesaid, with conveniences and appurtenances belonging to the said room; to hold the same, with their appurtenances, and the sole and uninterrupted use and occupation thereof, unto the said Joseph Glass, his executors, administrators, and assigns, for the term of one week from the date hereof; and at the expiration of that time, that the said Joseph Glass may hold the said apartment from week to week, at the same rent as aforesaid, until one week's notice be given by one of the said parties to the other. Provided always, and it is agreed between the said parties, that it shall not be necessary that such notice shall expire at the same day, time, or month of the year as the date of this agreement, but that the said James Western and Joseph Glass, or either of them, shall and will accept and take one week's notice, at any period, as a sufficient notice for the conclusion of the term created by this agreement. As witness our hands, this 2d day of January, 1833.

Witness, THOMAS WHITE, GEORGE HOPKINS.

JAMES WESTERN, JOSEPH GLASS.

Agreement for Letting Apartments for One Year, with a Proviso for Three Month's notice

MEMORANDUM,—That it is hereby declared and agreed by and between John Smith, of West-place, City-road, in the county of Middlesex, butcher, and George Read, of St. John-street, Clerkenwell, in the same county, gentleman, in manner following: that is to say, that the said John Smith hath agreed to let, and hereby doth let, and the said George Read hath agreed to take, and hereby doth take, all that the first and second floor and back kitchen, with the conveniences and appurtenances thereto belonging, of the house now in the occupation of the said John Smith, situate No. 4, West-place, aforesaid, together with one cellar adjoining the aforesaid kitchen, and to the said house belonging; to hold the same, with their appurtenances, and the sole and uninterrupted use and occupation thereof, unto the said George Read, his executors, administrators, and assigns, for the term of twelve months, to commence from the 25th day of March now next ensuing, at the net yearly rent of £42, for the year, payable quarterly, on the 24th day of June, the 29th day of September, the 25th day of December, and the 25th day of March, thence next ensuing.

And it is further agreed, by and between the parties hereto, that the said George Read, after the expiration of the said term of twelve calendar months, may hold and enjoy the said premises hereby let unto him, from quarter to quarter, at the same rent as aforesaid, until three months' notice to quit be given by one of the said parties to the other of them. And it is also further agreed between the parties, that when the said George Read shall quit the said premises hereby demised to him, he shall and will leave the same in as good a state and condition as the same now are, reasonable and proper use thereof only excepted. As witness our hands, this 12th day of March, 1833.

Witness, EDWARD COLE, MARY WARD.

JOHN SMITH, GEORGE READ.

Should the apartments be furnished, after the words—"Kitchen to the said house belonging," add, "And also the household goods and furniture used therewith, and now

being therein, as mentioned and set forth in the schedule hereunto annexed."

An inventory of the articles of furniture, kitchen utensils, &c. &c. must be made and copied, to follow the agreement. The agreement must be written on a one pound agreement stamp, which can be obtained at a law stationer's;—it should be legibly written, and all abbreviations avoided.

The following is a Form for the Inventory.

In the Front Room, First Pair.

Eight cane-bottomed chairs, two mahogany dining-tables, fender and fire-irons, a Kidderminster carpet, four yards by three.

In the Back Room, Ditto.

A French bedstead, cotton furniture, white counterpane, four blankets, *(and so on, naming and describing the furniture of the whole of the premises occupied by the lodger.)*

Witness, Edward Cole,	John Smith,
Mary Ward.	George Read.

If any repairs are to be done by the landlord, they should also be mentioned in the agreement; and if the attendance of a servant is stipulated for, it should also be expressed.

On taking a house, the same precautions are necessary as on entering lodgings. It will be necessary to ascertain that the taxes are paid; and, if it be not your landlord's freehold property, that his ground rent be paid.

A house is often taken on a verbal agreement, especially when engaged quarterly; but, for the reasons before stated, it will be much safer to commit the agreement to paper.

On taking a house, it is usual to pay for the fixtures, on an understanding, that, on quitting the same, the landlord shall repurchase the same, or allow you to sell to the next incoming tenant. It is most important that this should be clearly understood, as there may be some fixtures that it is impossible for the tenant to take away with him; or which, if taken, would be of little value to him.

In the following precedents for agreements, care has been taken to meet these cases; and to all such agreements should be appended a correct inventory of all the fixtures, which inventory should be signed both by landlord and tenant.

The agreement inserted at page 11, contains a clause for re-purchase by the landlord, which is now becoming

customary, and is decidedly the most equitable mode: persons taking houses ought not to be saddled with the absolute purchase of that, which they only require the use of during their tenancy.

Where Possession is taken at an intermediate period.

If a tenant take possession in the middle of a quarter, then the general practice is to pay up such moiety of the rent as may be due to the next ensuing quarter, and then go on in the regular course—the rent falling due and being dated from the usual quarter days. No landlord can make a distress for less than a quarter, nor can he, in the event of a tenant taking possession in the middle of a quarter, distrain at the end of three months; but he is compelled to wait until the expiration of a quarter from the usual quarter day; but this is otherwise, where an agreement has been entered into, that tenancy shall commence from some day agreed between the parties: as, in all these cases, special or private agreements are held good, in defiance of *general* rules.

A. took a lodging on the 14th of April, as a quarterly tenant, and it was agreed that a quarter's notice should be given on either side. A., wishing to leave, gave notice on the 14th October, to quit on the 14th January; the landlord refused to accept it, and tenant was well advised that the notice was bad, the term used in the agreement being "a quarter's notice;" by which the law recognises only the periods between one quarter day and another. Had the words been "three months' notice," landlord must have accepted the notice.

All agreements of this kind should explicitly state, "that the tenancy is terminable by three months' notice, given at any time; and such notice to be good, though it be not given on any usual quarter day, or become terminable upon one, or at the same period of the year as that on which the tenancy commenced."

Agreements of not more than 1080 words require a £1. stamp; but it is not necessary to stamp them before they are signed; it may be done within twenty-one days, but the sooner the better. Delays are often dangerous.

Agreement for Letting a House for a Year certain, and then on from Quarter to Quarter, with a Condition for the Tenant to keep in Repair.

It is agreed, this 20th day of December, in the year of our Lord 1833, between Robert Rumbold, of Red Lion-square, in the county of Middlesex, broker, of the one part

and Andrew Anson, of 33, Blackfriar's-road, in the county of Surrey, bookseller, of the other part, in the manner following, (that is to say),—In consideration of the rent and other matters herein contained, he the said Robert Rumbold agrees to let, and the said Andrew Anson agrees to take, all that messuage or tenement being No. 29, Panton-street, in the parish of St. Pancras, in the county aforesaid, with the garden behind the same, as tenant, from year to year, to be calculated from the 25th day of December now next ensuing, at and under the yearly rent of £28, payable quarterly, and the first quarterly payment to be made on the 25th day of March, 1834. And it is hereby agreed, that from and after the 29th day of September next, three months' notice, in writing, terminating on one of the usual quarter days, for quitting the said messuage or tenement, shall be deemed sufficient on either side.

The said Andrew Anson also agrees to keep the said premises in tenantable repair and condition during his tenancy, and, at the expiration thereof, so to leave them; and to make good any damage that may be occasioned by the removal of any fixtures belonging to him or otherwise: and to pay all taxes and outgoings in respect of the said premises, except the ground rent.

The said Andrew Anson further agrees to permit the said Robert Rumbold, at the expiration of the tenancy, to purchase, by valuation in the usual manner, such of the fixtures as the said Andrew Anson would otherwise be entitled to remove, as he the said Robert Rumbold shall elect so to purchase; and that the said Robert Rumbold shall be at liberty, at all seasonable times, to view the state of repair of the premises. As witness the hands of the parties, the day and year first above written.

Witness, GEORGE KNIGHT, ROBERT RUMBOLD,
THOMAS WEST. ANDREW ANSON.

Where the landlord will not agree to repurchase the fixtures, some precaution ought to be taken for obtaining the same of the next tenant; and this is generally done by an arrangement between the outgoing and incoming tenant; but where, as is often the case, there is no tenant coming in immediately, a clause to compel the landlord to act on behalf of his tenant will be necessary.

Agreement for Letting a House for a Quarter of a Year, and then on from Quarter to Quarter; with Clause that Landlord shall Charge next incoming Tenant for Fixtures, and pay over the Amount to the present Tenant.

IT IS AGREED, this 20th day of March, in the year of our

Lord 1833, between Robert Walker, of Red Lion-square, in the county of Middlesex, broker, of the one part, and Andrew Anson, of 33, Blackfriar's-road, in the county of Surrey, bookseller, of the other part, in the manner following (that is to say),—In consideration of the rent and other matters herein contained, he the said Robert Walker agrees to let, and the said Andrew Anson agrees to take, all that messuage or tenement being No. 29, Panton-street, in the parish of St. Pancras, in the county aforesaid, with the garden behind the same, as tenant, from year to year, to be calculated from the 25th day of March now next ensuing, at and under the yearly rent of £28, payable quarterly, and the first quarterly payment to be made on the 24th day of June next. And it is hereby agreed, that from and after that day, three months' notice in writing, terminating on one of the usual quarter days, for quitting the said messuage or tenement, shall be deemed sufficient on either side.

The said Andrew Anson also agrees to keep the said premises in tenantable repair and condition during his tenancy, and, at the expiration thereof, so to leave them; and to make good any damage that may be occasioned by the removal of any fixture belonging to him or otherwise, and to pay all taxes and outgoings in respect of the said premises, except the ground rent.

And the said Robert Walker doth hereby agree to charge any future incoming tenant, for all such fixtures as were on the premises at the time of the said Andrew Anson's tenancy, so much money as, on a fair valuation, they may be found to be worth, and to pay the amount to the said Andrew Anson, or to his heirs, executors, or administrators, so soon as such new tenant shall take possession of the said premises. As witness their hands, the day and year first above written.

Witness, GEORGE FORBES, ROBERT WALKER,
WILLIAM CUFF. ANDREW ANSON.

The subject of Leases will be considered at another part of this work, they more properly relating to the grantor than the tenant; but, previous to taking a lease of any premises, it is the duty of every man to ascertain the title of the intended grantor to them, and his power of granting such lease. The intended tenant has a right to demand of his landlord his title to the premises; and the reader will be enabled to judge as to the soundness of such title, when the nature of estates, and the limitations upon landlords are developed.

We shall proceed at once to an agreement for a lease.

For granting a Lease of a House.

MEMORANDUM, made this 16th day of June, 1833, between Robert Walker, of Red Lion-square, broker, of the one part, and Andrew Anson, of 33, Blackfriar's-road, bookseller, of the other part, as follows, viz.—First, the said Robert Walker doth hereby agree, at his own costs, with all convenient speed to execute unto the said Andrew Anson a lease of all that messuage late in the possession of Vincent Curwen, situate in Drury-lane, in the parish of St. Giles, in the county of Middlesex, with the appurtenances, to hold to him the said Andrew Anson, his executors and assigns, from Midsummer-day now next ensuing, for the term of 21 years, at and under the annual rent of £35, payable quarterly, free of taxes, except the land tax; which lease shall contain all the usual and reasonable covenants, and particularly certain covenants that the said Robert Walker shall allow, out of the first year's rent of the said premises, the sum of £10, towards the repairs thereof, and that he shall also pay all the taxes in respect of the said house to Midsummer-day next; and shall also indemnify the said Andrew Anson, and his assigns, from the ground rent thereof, during the said term; and that there shall also be inserted in the said lease, an exception against damages happening by fire to the said premises, during the said term; in consideration whereof the said Andrew Anson doth hereby agree to accept such lease, and to execute a counterpart thereof, when tendered to him for that purpose. As witness their hands, the day and year first above written.

Witness, GEORGE FORBES, WILLIAM CUFF. — ROBERT WALKER, ANDREW ANSON.

STAMPING AGREEMENTS.

Agreements of this nature must be stamped, but as there are 21 days allowed by law, from the date of the same, for this purpose, in agreements for leases, this expense can easily be avoided, by preparing the lease within that period.

In cases of weekly tenancy, agreements may be renewed every three weeks, and this is no evasion of the Stamp Act.

Directions for Stamping Agreements.

Go to Somerset House, in which the Stamp-office is situated, and proceed to the Solicitor's Office, on the first

floor, who will mark your agreement with the amount of the stamp required (£1); then proceed to the Receiver-General's Office, where you will find certain printed papers called *Warrants*, lettered from *A* to *Z*; under warrant *N* you will find the head Agreements, and having written your name and address at the top of the warrant, write opposite the word Agreement one, and put the amount thus—

One. Agreements not containing more than 1080 words £1 0 0

You pay the £1, and get this warrant marked; then take it to the Comptroller's Office, next room; from thence. down stairs, to the Register of Warrants, where you leave the warrant—proceeding to the Stationers' waiting-room, with your agreement; on your name being called, you hand it in, and, when stamped, it is returned to you. You may avoid this trouble by providing yourself with a stamp before hand.

Lodgings taken for a time certain, may be left without notice; and on the expiration of a lease, premises may also be left without notice; but notice is required in all agreements which do not fix a certain time.

OF NOTICE TO QUIT AND DISTRESS.

If tenant be desirous of quitting the premises he holds, he must give notice in writing, according to the terms of his agreement. A common error on this subject is, that such notice must be given *before twelve* in the day; but the law knows no division of a day, and notice given at eight in the evening on one Saturday, to quit the next, is good.

Notice of Quitting Apartments.

Sir,—I hereby give you notice, that on Friday, the 22d of May next, I shall quit and deliver up possession of the apartment I now hold of you, in the house situate No. 7 Crown-street, Seven Dials, in the county of Middlesex. Witness my hand, this 15th day of May, 1833.

JOHN SMITH.

Notice of Quitting a House.

Sir,—I hereby give you notice, that, on the 24th of next June, I shall quit and deliver up possession of the house situate No. 3, Angel-court, Throgmorton-street, in the city of London, which I now hold of you. Witness my hand, this 25th day of March, 1833. GEORGE GREEN.

It is not necessary, though it is best, that these notices should be personally served; if left at the residence of the landlord, it is sufficient, but the tenant should keep copies.

It is highly important that a tenant remove all his property from the premises, previous to the expiration of his term, for he cannot afterwards enter upon them, without the consent of the landlord; and in attempting to do so without it, he is liable to be treated as a wilful trespasser.

When Tenant is Distrained upon.

If a tenant be distrained upon for rent or taxes due by his landlord, he must either give up his goods, or pay such rent. The best course in such cases is to buy in your goods, or take them from the appraiser at his valuation. The tenant's remedy is then against his landlord, and he may deduct such sums from his own rent, as money paid to his landlord's use,—or sue him at law for it.

When a distress is put upon the goods, five clear days are allowed, before it is lawful to sell them; that is, five whole days, exclusive of the one on which the distress was made. If the distress is made on Thursday, no sale can take place until the Wednesday following. If the distress is made on Monday morning, no sale could take place till the following Monday, for they must not sell on the last of the five days, and cannot on the Sabbath. Distress must also be between sun-rising and sun-setting. It must also be for rent in arrear; therefore it cannot be made the same day on which the rent becomes due, for if the rent be paid at any time during that day, while a man can see to count it, the payment is good.

If you want time, it is as matter of courtesy, *not of right*, generally granted. In such case, you give to the broker, or person making the distress, a notice, in the following words:

Mr. Andrew Weston,—I hereby desire you will keep possession of my goods, which you have this day distrained for rent due (or alleged to be due) from me to you, in the place where they now are, being in [*the back room, on the second floor of the house No. 3, in Dean street, Soho, in the county of Middlesex,*] or, [*the house No. 7, Crown-street, Seven Dials, in the county of Middlesex,*] for the space of seven days from the date hereof, and I will pay the man for keeping the said possession. Witness my hand, this 31st day of July, 1833. JOHN TEMPLE.

This being a matter of accommodation, the broker expects some remuneration, though not legally entitled to it

In these cases it is best to apply to the landlord for such indulgence, and then the broker can have no pretence for interference, if the landlord consents.

Lodgers frequently lock their doors as a means of safety against distresses, conceiving that every room, if inhabited by a different tenant, becomes a separate tenement; this idea is erroneous. If the *outer* door of a house be open, the landlord, or any one authorised by him, may break open any inner door to make a distress. This maxim was established by Lord Hardwicke, and has been maintained ever since.

There is scarcely any thing more ruinous than persons acting on a false supposition of their rights. The power of seizure by landlords is the most arbitrary of all our laws, but from circumstances it must be so. There are very few cases where a tenant is justified in forcibly opposing a distress; but if a landlord comes to distrain, and refuses the rent when offered, tenant may by force prevent the seizure of his goods, for then the landlord is a trespasser.

If landlord seizes perishable articles, such as milk, &c. the tenant is justified in reseizing the same, if it be worth his while.

The law has been stretched, however, to very extreme cases, for the protection of landlords, who have a right to obtain their rent by the sale of *any thing* they find upon the premises. And it was ruled, some short time since, that a seizure of a tandem and horses, *put up casually at an inn whilst the owner dined there*, was good, and distress made upon it accordingly.

The broker's charge, on making the distress, where the rent is under £20, is 3s.; and the man in possession 2s. 6d. per day; it is also usual (though not a matter of right) for the tenant to support the man in possession, and this is a sort of return of accommodation, as the broker may move the goods away, and "impound them," if he pleases. The appraisement must only be charged at sixpence in the pound on the value of the goods; the stamp must correspond with the value of the appraisement; 10s. are allowed for advertisements, if *there are any*, and nothing if there are not; and the auctioneer's charges for catalogues, sale commission, and delivery of goods, 1s. in the pound of the produce.

In cases of illegal distress, the remedy is by replevin, in order to bring back the pledge to the proprietor, in case the distress were unlawfully made, and without just cause.

Replevin is a writ to the sheriff, complaining of an unjust taking and detention of goods or chattels, commanding

him to deliver back the same to the owner, upon security given.

The nature of this security is by a bond; and the mode of proceeding to be adopted, on the party's entering into a replevin bond, is to take two sufficient housekeepers, of the city or county where the distress was made, to the sheriff's office of that city or county, or to the office of his deputy; and, upon the bond being filled up, let it be executed by the plaintiff and his two sureties. A precept or warrant, and summons, is then made out, upon which the officer will replevy the goods, if found in the county. When the goods have been replevied and delivered to the plaintiff, (i. e. the person distrained upon,) he must, according to the tenure of his bond, levy his plaint at the next County Court, and prosecute his suit with effect and without delay. If he do not levy his plaint at the next County Court, or if he make default in any subsequent part of the proceedings, the defendant may take an assignment of the bond, and, having got it stamped, may proceed thereon against the plaintiff and his pledges.

For the greater security of persons distraining for rent in arrear, it is provided, by the 2d Geo. II. c. 19, sec. 23, that sheriffs, and other officers having authority to grant replevins, shall, in every replevin of a distress for rent, take, in their own names, from the plaintiff and two sureties, a bond in double the value of the goods distrained, (such value to be ascertained by the oath of one or more witnesses not interested, which oath the person granting such replevin is to administer,) and conditioned for prosecuting the suit with effect and without delay, and for returning the goods in case a return shall be awarded before any deliverance be made of the distress.

And to prosecute with effect, the plaintiff must not only proceed to a decision of the suit, but must have success in it, or he does nothing; and it is not a completion of the condition to have *levied* a plaint only in the County Court, for the word extends to all the proceedings, from the origin to the conclusion of the action.

Form of a Replevin Bond.

Know all men by these presents, That we, George Cox, of Maidstone, in the county of Kent, gentleman, and William White, of the same town and county, wine-merchant, and Edward Hall, of Rochester, in the same county, grocer, are held and firmly bound to James Rowe, esq. sheriff of the county aforesaid, in the sum of £400 of lawful money

of Great Britain, to be paid by the said James Rowe, or his certain attorney, executors, administrators, or assigns; for which payment to be well and truly made, we bind ourselves, and each of us binds himself for the whole and in gross, our heirs, executors, and administrators, firmly by these presents, sealed with our seals. Dated this day of , and in the year of the reign of our Sovereign Lord William the Fourth, of the United Kingdom of Great Britain and Ireland, King, Defender of the Faith, and so forth.

Now the condition of this obligation is such, that if the above bounden George Cox shall and do appear at the next County Court, to be holden for the county of Kent, at the town of Maidstone, on the 4th day of June next, and there prosecute with effect his suit, which he has commenced against Andrew Swain, for taking and unjustly detaining [*three cows, three sheep, and twenty sacks of flour*,] (*as the case may be*) the goods of the said George Cox, and to make return of the said goods, if a return of the same shall be adjudged, that then this present obligation shall be void and of no effect, or else to remain and be in full force and virtue.

Goods may be replevied in two ways, *viz.* by writ, which is by the common law; or by plaint in the Sheriff's Court, which is by the statute; and the sheriff ought to take two sorts of pledges, one by the common law, and another by the statute.

"And the party desiring it, and giving such security as is by law required, shall, upon any distress made for rent or otherwise, have his writ of replevin."—Co. Lit. 145, 6.

The plaintiff in a replevin ought to be careful in giving his instructions for it; for he must be certain in setting down the number and kinds of the cattle or other things which are distrained, otherwise the replevin is not good.

The defendant in a replevin is the party that made the distress; and when he justifies in his plea for what cause he distrained, that plea is called his avowry.

By the following extract from the Act, it will be seen that the sheriff must take security in the nature of bail, and that if the plaint be not proceeded in, it may be indorsed to the plaintiff.

"To prevent vexatious replevins of distress taken for rent, it is enacted, that after the said twenty-fourth day of June, one thousand seven hundred and thirty-eight, all sheriffs and other officers having authority to grant reple-

vins, may and shall, in every replevin of a distress for rent, take in their own names, from the plaintiff, and two responsible persons as sureties, a bond in double the value of the goods distrained, (such value to be ascertained by oath of one or more credible witness or witnesses not interested in the goods or distress; which oath the person granting such replevin is hereby authorised and required to administer;) and conditioned for prosecuting the suit with effect, and without delay; and for duly returning the goods and chattels distrained, in case a return shall be awarded before any deliverance be made of the distress; and that such sheriff or other officer as aforesaid, taking any such bonds, shall at the request and costs of the avowant or person making conusance, assign such bond to the avowant or person aforesaid, by indorsing the same, and attesting it under his hand and seal, in the presence of two or more credible witnesses; which may be done without any stamp, provided the assignment so indorsed be duly stamped before any action brought thereupon; and if the bond so taken and assigned be forfeited, the avowant or person making conusance may bring an action, and recover thereupon in his own name; and the court where such action may be brought may, by a rule of the same court, give such relief to the parties upon such bond as may be agreeable to justice and reason; and such rule shall have the nature and effect of a defeasance to such bond."

If the tenant, in consequence of having entered into the said bond, does not prosecute his suit with effect, the landlord may, on application to the sheriff of the county or city where such distress is made, in four days, exclusive of the time limited in such bond for the tenant to prosecute his action in replevin, have an assignment thereof, and proceed thereon against the tenant and his sureties, in the same manner that the law allows a plaintiff to proceed against a defendant and his bail on a common bail bond.

The sheriff may break open a house to execute a replevin, if denied entrance. 2 Inst. 193, stat. 1, West. c. 17.

The bail bond in replevin is taken at the peril of the high sheriff, the under sheriff, and the replevin clerk, and they are all answerable to defendant, and actions will lie against them for the deficiency of pledges, 2 Black. Rep. 1220; and therefore you cannot except against bail in replevin, in order to compel a justification.

If a landlord distrains, and carries the same out of the county, so that the sheriff, upon a replevin, cannot redeliver the goods, then, upon the sheriff's return of the

replevin, the party may have a writ of withernam directed to the sheriff, to take as many of the lord's beasts, or as much goods in his keeping, till he have made a deliverance of the first distress; and if the goods or cattle be conveyed to a fort or castle, the sheriff may command the power of the county, and beat it down. Rastall. Tit. Distress, 7.

If a distress be made in a franchise or bailiwick, the sheriff is to direct his replevin to the bailiff thereof, to deliver them upon pledges, &c. and if he make no answer, or return that he will make no deliverance, or the like, then the sheriff may enter into the liberty and make deliverance; and if the distress was taken without the liberty, and impounded within the liberty, then the sheriff may enter and make deliverance, and need not first to make out a warrant to the bailiff of the liberty.—Stat. Marlbr. c. 21, Westm. 1, c. 17, 2 Co. Inst. 140, 194.

After giving the bond, levying the plaint is done by preparing, on a slip of paper, a form thus—

KENT TO WIT.—George Cox complains of Andrew Swain, in a plea for taking and unjustly detaining his cattle, goods, and chattels, against sureties and pledges.

Pledges to prosecute, { JOHN DENN, and RICHARD FENN.

This is lodged at the County Court Office, and the plaint is then proceeded on by them.

It is usual, instead of proceeding with the case in the County Court, where they cannot enter into any dispute as to defendant's title, &c. to move the case into the Common Pleas or King's Bench, but most generally the former. This is done by issuing a writ called a recordare facias loquelam, or, in common speaking, a *re.-fa.-lo.*

In order to issue this writ, write on a piece of paper the following precipe.

KENT to wit.—Recordare facias loquelam for George Cox against Andrew Swain, for taking and unjustly detaining the cattle, goods, and chattels, of the said George Cox. Returnable before his Majesty's Justices at Westminster, on next County Court day, of the morrow of All Souls.*

On the part of George Cox, plaintiff in person.

* This day must be the next following return of any term.

Take this precipe to the Cursitor's Office, Rolls-buildings, Chancery-lane; leave the precipe, and he will tell you when you can have the writ. When you get the writ away, take it to the sheriff of the county for allowance, and for his return, for which you pay 16*s*. 6*d*. When it is so returned, take it to the Filacer's Office, in Elm-court, Middle Temple, who thereupon gives a rule that defendant shall appear, which must be served, and will cost you 2*s*. 10*d*.

If, on the expiration of the rule, defendant does not appear, bespeak a writ of *pone* from the filacer, pay for the same 5*s*. 1*d*.; then take it to the Seal Office, in Middle Temple-lane, and get it sealed, pay 7*d*. and from thence go to the Sheriff's Office with it. On lodging the writ, sheriff will serve, or cause defendant to be served with, a summons to compel his appearance.

If, at the expiration of the time for appearance, defendant does not appear, go to the sheriff, who will give you the writ with a return of "*nihil*" (nothing) written on it. Upon this the filacer will make out a distringas, pay as before for the *pone*, and seal it; lodge this with sheriff, who will in turn distrain upon your landlord for 40*s*. and costs.

The object of all this is to make the Landlord appear to answer your complaint in the Court proceeded in; and if he does not appear when thus distrained on, go to the Sheriff's Office and get your distringas *returned*, pay 10*d*. go to the filacer, who will make out an *alias;* that is, another or second distringas on this, with which you do exactly the same as with the first. The sheriff levies for 80*s*. and so on with a pluries, or a third, fourth, or fifth distringas, increasing his levy from 80*s*. to £8, £16, and £32, &c. &c. until defendant do appear.

This money is however only held as a trust by the sheriff, for on defendant appearing, and paying all your costs for the distringases, he may recover the same.

When the defendant appears, he does it with the filacer, and at that office you search for it in the Appearance Book; the appearance will state the name of his attorney, or whether he appears in person. When you have ascertained this, prepare a declaration in the following form.

In the Common Pleas.

On the day of 1833, in term, in the year of King William the Fourth.

KENT TO WIT.—Andrew Swain was summoned to answer George Cox, wherefore he took the goods and chattels of

the said George Cox, and unjustly detained them against sureties and pledges, &c. And whereupon the said George Cox in his own person complains that the said Andrew Swain, on the [*Here state some day* after *that on which the distress was made, and previous to the issuing of the re.-fa.-lo., it had better also be before the date of the replevin bond,*] 8th October,* in the year of our Lord 1826, at the parish of Wastle, and in a certain place called or known by the name of Nabs's Farm, in the said county, took the cattle of the said George Cox, to wit—20 cows, 20 sheep, 20 oxen, 20 pigs, and 20 horses; and also the goods and chattels of the said George Cox, to wit—100 sacks of flour, belonging to him the said George Cox, and unjustly detained the said cattle, goods and chattels, against sureties and pledges, until, &c. Whereby the said George Cox says he is injured, and hath sustained damage to the value of £200, and therefore he brings his suit, &c

In this declaration the things taken ought to be particularised; but the common practice is to name several of each sort of thing taken, as, for instance, if a table, six chairs, and looking-glass be taken, to say—"the goods and chattels of the said ———, to wit, 10 tables, 10 chairs, and 10 looking-glasses."

It is material that there should be a sufficient number of things stated, and also that the damage should be stated at more than the real amount.

As there may be some difficulty with this part of the proceeding, the best plan is to state the case, and leave it to a special pleader to draw the declaration, as an error in this part of the proceedings would be fatal. The fee is usually half a guinea.

The following form of instructions will suggest the mode, but it must of course be varied by cases.

CASE.

On the 7th of October, 1826, a distress was made on Mr. George Cox, at the instance of his landlord, Mr. Andrew Swain, on a farm and premises tenanted by Mr. George Cox, for rent alleged to be due to Mr. Andrew Swain, such not being the fact. The following is a list of the

* Here distress was made on the 7th, and bond executed on the 10th.

stock seized under the distress—3 cows, 3 sheep, and 20 sacks of flour; the farm is called Nabs's Farm, and is situate in the Parish of Wastle, in the county of Kent.

Mr. ——— will be pleased to draw the necessary declaration.

Copy your declaration fairly upon draft or copy paper, written on one side only, and deliver such fair copy to the defendant's attorney, previously indorsing the declaration thus—

Common Pleas, &c. Michaelmas Term, 3 William 4.

Cox, *v.* Swain. } Declaration.

The defendant must plead hereto in eight days, or judgment.

In eight days after the delivery of this, defendant will plead, if he intends to defend the action; if he does not plead, the action is said to go by default, but it will be necessary, four days after delivering the declaration, to prepare a precipe thus—

Common Pleas. (In replevin.)

Cox, *v.* Swain. } Rule to avow.

Cox, plaintiff in person.

Take this to the Secondary's Office, in King's Bench Walk, and leave it, paying 6*d*. On the fifth day, serve a copy of the following demand on the defendant, or his attorney, if he has one.

Common Pleas. (In replevin.)

Cox, *v.* Swain. } The plaintiff demands a plea or judgment.

Yours, &c.

George Cox, plaintiff in person.

To Mr.——, the defendant's attorney, *or*
To Mr. Swain, the above-named defendant.

If no plea be given in answer to this demand, at the expiration of the eight days you are entitled to sign judgment.

HOW TO PROCEED WHEN DEFENDANT DOES NOT PLEAD.

If within 24 hours after the service of this no plea be delivered to you, which, if it be an illegal distress, will probably be the case, prepare a writ of inquiry, that is, write on a piece of parchment the following form.

William the Fourth, by the grace of God, of the United Kingdom of Great Britain and Ireland, King, Defender of the Faith, to the Sheriff of Kent, greeting. Whereas Andrew Swain was summoned, &c. [*as in the declaration and plea, or avowry, to the end thereof*] and the same day was given to the said Andrew Swain, &c. on which day came the said George Cox into our court before us at Westminster, and the said Andrew Swain although solemnly called, did not come, nor further prosecute his writ aforesaid: Therefore it is considered that the said Andrew Swain take nothing by his writ aforesaid, but be in *mercy* for his false claim thereof; and that the said George Cox do go thereof without day, &c. Therefore we command you, that, according to the form of the statute in such case lately made and provided, by the oath of twelve good and lawful men of your county, you diligently inquire how much of the yearly rent aforesaid, at the same time of taking and distraining of the goods and chattels aforesaid, was in arrear and unpaid; and how much the goods and chattels aforesaid, so as aforesaid taken and distrained, were worth, according to the true value of the same, and the inquisition, which, &c. send to us from [*the return of the inquiry*] under your seals, and the seals of those by whose oath you shall take that inquisition, together with this writ. WITNESS, Sir Thomas Denman, knt. at Westminster, the day of in the year of our reign.

The return of this inquiry should be the first return of the next term, that is, the morrow of St. Hilary; and the *teste*, the first day of the term in which the writ issues.

When it is prepared, take it to the Prothonotaries, in Tanfield-court, Middle Temple; pay their charge, which will be according to the length, and seal it at the Seal Office. Indorse on it—"To be executed on the" [*name the day*] at [*name the place where inquiries are usually executed*] and which you must learn at the Sheriff's Office, and then leave it with the Sheriff.

You must now give notice to the defendant, or his attorney, which is done in writing, in the following terms:—

In the Common Pleas.

Between GEORGE COX, plaintiff,
and
ANDREW SWAIN, defendant.

Take notice, that a writ of inquiry of damages in this cause will be executed on Friday, the of instant, between the hours of eleven in the forenoon and one of the clock in the afternoon of the same day, at the office of the Undersheriff, in —— Street, Maidstone, in the county of Kent. Dated this of 18

George Cox, plaintiff in person.

To Mr. ——, attorney for the defendant.

The place where inquiry is to be executed must be fully explained and described, as "at the house called or known by the sign of the Spread Eagle, in George-street, Maidstone, in the county of Kent,"—or as the fact may be.

Eight days' notice must be given, exclusive of the days on which it is given and executed—20th for 30th is good.

As the object of this portion of the Work is merely to inform tenants generally of their mode of obtaining redress when they are wrongfully seized upon, we shall not enter minutely into the rules and regulation of the practice as to notice, countermand, &c. which will come more properly under review in our instructions for bringing and defending actions in person.

Previous to executing the inquiry, collect together all the witnesses you can muster, to prove the damage done to you. If they are unwilling, or you doubt their intention of coming forward, you may have a subpœna, which means a writ to compel them—*sub* (under), *pœna* (penalty),—because there is penalty if they neglect.

The Form of Subpœna.

William the Fourth, by the grace of God, of the United Kingdom of Great Britain and Ireland, King, Defender of the Faith, to James Cole, William Hone, and Robert Brown, *(witnesses' names)*.

We command you, and every of you, that, setting aside all and singular businesses and excuses whatsoever, you, and every one of you, be and appear in your proper persons before James Rowe, esquire, sheriff of our county of Kent, on Monday, the day of , at the

Sheriff's Office in Street, Maidstone, in the county of Kent, by eleven of the clock in the forenoon of the same day, there to testify the truth according to your knowledge, in a certain cause now in our court of the Bench, depending between George Cox, plaintiff, and Andrew Swain, defendant, of a plea of trespass, on the part of the plaintiff, on which our certain writ of inquiry of damages has been sent by our said justices, out of our said court of the Bench, and directed to the said sheriff, then and there in due form of law to be executed before the said sheriff. And this you nor any of you shall in no wise omit, under the penalty of every of you of £100. WITNESS, Sir Nicholas Tindal, knight, at Westminster, the day of in the year of our reign.

Take this to the Prothonotary's Office, who signs it—pay 1*s.*; to the Seal Office, pay 7*d.*

Copy the writ correctly, and let one such copy be served upon each of your witnesses, giving them with it 1*s.* which is called "conduct-money."

When the day for executing the inquiry arrives, go with your witnesses before the undersheriff, at the place named. State your case, and the undersheriff will examine your witnesses, and also the defendant's, should he produce any; and the jury will then assess what your loss or damage has been.

The charges on the execution of an inquiry are about £2.

On the return of the inquiry, (*i. e.* in this case, the first day of next term, in January,) call at the Undersheriff's Office for it; give a receipt in his book, and he will give it you, with what is termed the inquisition written upon it.

On the fourth day after the return, take it to the prothonotary's clerk, pay him 14*s.* for entering it; then go to the Inner Office, and the prothonotary will tax your costs, without your preparing a bill of them, if you have all your papers ready. The Clerk of the Judgments, who is also in that office, will enter what is termed final judgment; this, if return be on the 23d, may be done on the evening of the fourth day, the 26th.

The prothonotary will have marked the amount of your costs, under the damages assessed by the jury; and for these sums you are now entitled to issue a writ of execution, either against the person or goods of the defendant.

The forms of which are as follow:—

Fieri Facias, or Writ to Seize the Goods of Defendant.

William the Fourth, by the grace of God, of the United Kingdom of Great Britain and Ireland, King, Defender of the Faith, to the Sheriff of Kent, greeting. We command you that you cause to be levied of the goods and chattels in your bailiwick, of Andrew Swain, late of Maidstone, in your county, £200, which George Cox, in our court, before our justices at Westminster, recovered against him for his damages, which he had sustained by occasion of the taking and unjustly detaining the cattle, goods, and chattels of the said George Cox, in a certain place called Nabs's Farm, in your county, whereof the said Andrew Swain is convicted, and have you that money before our justices at Westminster, on* to render to the said George Cox, for his damages aforesaid, and have there this writ. WITNESS, Sir Nicholas Tindal, knight, at Westminster, the day of in the year of our reign.

Form of Capias ad Satisfaciendum, being a Writ to take the Body of Defendant.

William the Fourth, by the grace of God, of the United Kingdom of Great Britain and Ireland, King, Defender of the Faith, to the Sheriff of Kent, greeting. We command you that you take Andrew Swain, late of Maidstone, if he be found in your bailiwick, and him safely keep, so that you may have his body before our justices at Westminster, on* to satisfy George Cox £200, which were adjudged to the said George Cox, in our same court, before our justices at Westminster, for his damages which he had sustained by occasion of the taking and unjustly detaining the cattle, goods, and chattels of the said George Cox, in a certain place called Nabs's Farm, in your county, whereof the said Andrew Swain is convicted, and have there this writ. WITNESS, Sir Nicholas Tindal., knight, at Westminster, the day of in the year of our reign.

On these writs you must indorse thus—

GEORGE COX, plaintiff in person.
Levy, £ besides, &c.

* These blanks are for the returns, which, to give time, had better, in these cases, be the last of the Terms, or the first of the following ones.

The *sum* will be that which the Prothonotary has marked on your postea; it is usual to add £1 to that sum, for the writ of execution; but this cannot be enforced, and had better not be done. "Besides, &c." refers to the sheriff's poundage and incidental charges, with which the plaintiff has nothing to do.

HOW TO PROCEED WHERE DEFENDANT PLEADS.

If the defendant delivers a plea or avowry, you must make up an issue, which is done thus, on plain paper, as the copy of declaration:—

Michaelmas Term, in the year of the reign of King William the Fourth.

KENT TO WIT.—Andrew Swain was summoned to answer [*to the end of declaration and plea, then add as follows,*] And the said George Cox says, that the said Andrew Swain, for the reasons before alleged, ought not to well avow the taking the goods and chattels in the place in which, &c. because he says, that the —— pounds, or any part thereof of the rent aforesaid, at the same time when, &c. was not in arrear or unpaid to the said Andrew Swain, as the said Andrew Swain in his said avowry has above alleged; and this he prays may be inquired of by the county; and the said Andrew Swain does so likewise. Therefore it is commanded to the sheriff, that he cause to come before our Lord the King, at Westminster, from, &c. twelve, &c. by whom, &c. and who neither, &c. to recognise, &c. because as well, &c. the same day is given to the said parties there, &c.

Deliver this to the defendant's attorney, with this indorsement:—

"Take notice of trial in this cause for the next Assizes to be holden at Maidstone, in and for the county of Kent. Dated this 30th day of November, 1833."

This notice must be given fourteen days before the Assizes.

When this is done, prepare to make up your record, thus—Get at the law-stationer's a record piece, which is of parchment, ruled accordingly; shew them the length of the issue, and they will give you a proper skin; write on it, in large round hand—

Pleas at Westminster, before Sir Nicholas Tindal, knight, and his companions, justices of our Lord the King of the Bench, of Michaelmas Term, in the year of the reign of King William the Fourth, by the grace of God of the United Kingdom of Great Britain and Ireland, King, Defender of the Faith. Roll.

Then copy the whole of the issue. Then proceed thus—

KENT TO WIT.—The jury between George Cox, plaintiff, and Andrew Swain, defendant, in a plea of trespass, is respited here until [*the next return after the day of trial*,] unless his Majesty's justices assigned to take the Assizes in and for the county of Kent, shall first come, on the day of * at Maidstone, in the county of Kent, for default of the jurors, because none of them did appear; therefore let the sheriff have the bodies of the several persons mentioned in the panel annexed to the writ of Habeas Corpora Juratorum; and be it known, that the justices here in court, in this same term, delivered a writ thereupon to the deputy sheriff of the county aforesaid, to be executed in due form of law, &c.

After you have prepared the record, make out a venire, thus—

Form of Venire Facias.

William the Fourth, by the grace of God, of the United Kingdom of Great Britain and Ireland, King, Defender of the Faith, &c. to the Sheriff of Kent, greeting.

We command you, that you cause to come before our justices at Westminster, in fifteen days of Saint Martin, twelve free and lawful men of the body of your county, each of whom having £10 of lands, tenements, or rents, by the year at least, by whom the truth of the matter may be better known, and who are in no wise of kin either to George Cox the plaintiff, or Andrew Swain the defendant, to make a certain jury of the county between the parties aforesaid, in a plea of trespass, because as well the said Andrew as the said George, between whom the matter in variance is, have put themselves upon the jury, and have there the names of the jurors and this writ. WITNESS, Sir Nicholas Tindal, knight, at Westminster, the day of in the year of our reign.

* The day on which Assizes are held

With this writ prepare another, called

The Habeas Corpora, Juratorum.

William the Fourth, by the grace of God, of the United Kingdom of Great Britain and Ireland, King, Defender of the Faith, &c. to the Sheriff of Kent, greeting.

We command you, that you have before our justices at Westminster, [*the next return after trial*] unless his Majesty's justices assigned to take the Assizes in and for the county of Kent, shall first come, on [*day of Assizes,*] in your county, the bodies of the several persons named in the panel annexed to this writ, jurors summoned in our court, before our justices at Westminster, between George Cox, plaintiff, and Andrew Swain, defendant, in a plea of trespass, to make that jury, and have there this writ. WITNESS, Sir Nicholas Tindal, knight, at Westminster, the day of in the year of our reign.

Take the venire to the Prothonotary's Office, and get it signed, pay 1*s.* 4*d.*; then go to the Seal Office, and get it sealed, pay 7*d.*; take the Habeas Corpus to the Chief Justice's chambers, pay 1*s.* 9*d.* and then get it sealed. Take both the writs to the Sheriff's Office, and get them returned, pay 14*s.*

After this is done, go to the prothonotary and get a roll of the term, which he *gives* you, (this is the only thing given in law!) Copy the issue upon it; then upon a slip of parchment write as follows:—

Common Pleas. Michaelmas Term, 4 Wm. 4.

KENT TO WIT.—George Cox in his own person, against Andrew Swain, in a plea of trespass.

KENT TO WIT.—The said Andrew Swain puts in his place Solomon Sly, his attorney, in the plea aforesaid.

Take this to the Warrant of Attorney Office, Elm-court, pay 1*s.* 4*d.* with it; and he marks the roll and record Then take the roll to the prothonotary, and he will mark it, and put a number on it; enter this number on your record, which the prothonotary also marks Then take it to the Chief Justice's chambers, in Serjeant's-inn, Chancery-lane, pay for passing the same; set down the cause with the Judge's Marshal, pay 14*s.* and leave the record with him.

The record will be then forwarded to the Assizes, if it be a country cause; or sent to the proper quarter, if it be a town one. You may then *issue subpœnas for your witnesses, and the form of them will be the same as that at page 25, down to the words "proper persons before;" and then proceed thus—"before his Majesty's justices assigned to take the Assizes in and for the county of Kent;" or, "before Sir Nicholas Tindal, knight, his Majesty's chief justice assigned to hold Pl as;" then proceed at "there to testify," to the end

You must only put four witnesses in any one subpœna, but you may have as many subpœnas as you please. Serve each witness with a copy, and give one shilling with each.

HOW TO PREPARE YOUR BRIEF.

Write on foolscap paper extended, as follows:

Common Pleas.

Between { GEORGE COX, plaintiff, and ANDREW SWAIN, defendant. }

Brief for plaintiff.

Then copy the whole of the declaration, plea, and replication.

After that, state the facts of the case as clearly as possible. Give an account of the names and number of your witnesses, and what you conceive each of them can prove, as thus—

To prove the handwriting of defendant to receipt for last quarter's rent.	Call JOHN ANDREWS.

Fold up the brief, and indorse it thus—

COX, v. SWAIN.	Brief for plaintiff.

Mr. ———, five guineas.

To be tried at Maidstone Summer Assizes for Kent.

George Cox, plaintiff in person.

On the day of trial take care all your witnesses are ready,

* Blank copies of subpœnas, and all other forms, are sold by the law stationers at very low prices, and may be filled up with more facility than writing them out

and be yourself near to your counsel, to suggest anything that strikes you during the trial.

It is usual to employ two counsel at least; one a junior counsel to open the case, and the other to do the more important duty. The amount of fees is discretional; two guineas are commonly given to the junior, and from three upwards to the senior ones.

After the trial, the marshal's clerk will call out your name, and demand the court fees.

If you are successful, and the cause is decided for you, the record is given back to you in the King's Bench; but it is not so in the Common Pleas; there, the associate indorses what is called a postea on your record, and you call for it at the office of Mr. Edgill, of Gray's-inn. On the fourth day of the term next following that on which your cause is tried, you may have this away. Take it to the prothonotary, who will tax your costs, and sign the final judgment for you.

For the amount which he allows you for damages (as found) and costs, you may issue execution either *fi.-fa.* or *ca.-sa.*, for which the forms already given will do.

We have thus enabled a tenant to redress himself in any case of unlawful seizure; but he must refer to our future pages for any special cases, and for a general insight into the laws upon which his case may rest.

[NOTE.—Counsel's fees are always in guineas, and not in pounds. It is usual to give their clerks 2s. 6d. when the fee is under five guineas, and 5s. if that sum, or more.

GENERAL POINTS TO BE ATTENDED TO BY TENANTS.

Tenant only a Special Interest in Timber.

Tenant has only a special or partial interest in the trees which grow upon the land let to him. This interest consists in the shade they afford his cattle, the fruit they produce, and the loppings for repairs, firing, &c.; but if they are blown down, or otherwise severed from the soil, they become the property of the landlord, as part of the inheritance.

Cannot remove Fixtures.

It is a general rule in law, that whatever is fixed to the soil, so as to become as it were a part thereof, cannot be removed, and will, at the expiration of the lease, belong to the lessor; but it has been held, that a tenant may remove what he has fixed for the convenience of his business, as counters, shelves, cider-mills, brewing vessels, &c. and

also chimney-pieces and wainscots put up by himself, provided, however, he do it during the continuance of his term; for if he let them remain until his term is ended, he cannot remove them without committing trespass. Hangings, chimney-glasses, or pier glasses, shall not go with the house, for they are matters of ornament and furniture. Other things may also be removed by the special custom of particular places. A covenant by a tenant to yield up, at the end of his lease, all buildings erected during the term upon the premises, includes buildings erected by the tenant for the use of trade, &c. if such buildings be let into the soil or fixed to the freehold, but not where they merely rest upon blocks or battens.

Estate not Delivered by Loss of Deed.

The estate of a lessee is not determined by the loss of the lease, so that the existence of the term can be proved; for the estate is derived from the lessor, and not from the lease, otherwise than as the lease shows the intention of the parties, which is not altered by the loss of the deed.

Entry of Lessor.

A lessor has a right to enter upon the premises of his lessee to see the state of the repairs, although there be no covenant for that purpose; such liberty being allowed by law, for the general benefit of the lessor's estate.

But he has no right to enter upon them in order to fell timber, work mines, or the like, without an express covenant allowing him to do so; for particular advantages belonging to some lessors only, and not to all, must be provided for by particular agreement.

Notice to Quit.

A general occupancy, without any stipulation as to time, is considered as a tenancy from year to year, and a regular notice to quit is requisite on the part of the tenant.

Where a tenant does any thing which amounts to a renunciation of his tenancy, as attorning to a stranger, he may be ejected without notice, because he himself determines his estate; but where a landlord accepts rent from any person, he acknowledges the tenancy, and must give a regular notice.

Where a person occupies under an agreement for a lease, with understood covenants, if he refuse to execute such lease, when tendered, he may be ejected without any previous notice.

A lease from year to year is held to be a tenancy for two years, the tenant being entitled to notice to quit; and this notice could only affect him at the end of two years.

A lease or agreement for twelve months, and six months notice, will be determined by a notice at the end of twelve months.

Where crops arrive at perfection only once in two years, the tenancy is construed not for one year, but for two years, and a notice to quit cannot be given at the end of the *first* or *third* year; notice must be given at the end of the *second* or *fourth*.

In all cases where an estate is determined by the will of either party, the tenant must have *half a year's* notice, and *six months'* notice will not do.

By the custom of London, a tenant *under* the yearly rent of 40*s*. is only entitled to a quarter's notice: if *above* 40*s*. to half a year's notice; and the customs of other places will be held good.

If a tenant assent to the terms of a notice, it will be held good, notwithstanding it may be irregular in point of time.

Notice to quit should, if possible, be given to the party himself; and, as no man is allowed to be a witness in his own behalf, the notice should be delivered by another person, who can, if necessary, prove the delivery. But it is not necessary to serve the notice upon the party: it will be good, if left at his usual place of abode, although not on the demised premises, if care be taken to prove the delivery to the wife, or servant. Verbal notice, under verbal agreements, has been held to be good; but written notices are always the best.

Waiver of Notice.

If a landlord accepts rent for occupation after the expiration of a notice to quit, he must give fresh notice; and the same where a landlord distrains for rent accruing after the expiration of a notice to quit.

Consequence of Holding over.

If a tenant hold over after the expiration of a notice to quit, properly served, he renders himself liable to an action for ejectment, and to the payment of double rent, by 4 Geo. II. c. 28; but this only relates to tenants for any term of life, or lives, or years, and does not include tenants for a less term than a year; and notice must be given *in writing*, to entitle the landlord to *double rent*;

but it has been decided, that a notice in writing to quit *includes the demand.* If notice be given before the lease has expired, double rent will commence from the termination of the lease; and the landlord does not lose his claim of double rent by an action of ejectment, the tenant being liable from the time between the expiration of the notice and the time when the landlord recovers the possession; but if the landlord accepts simple rent, he waives his right to double rent.

By 11 Geo. II. cap. 19, s. 18, if tenants give notice to quit, and afterwards hold over, they shall also pay double rent; and a *verbal notice* will render the tenant liable; but where a tenant gave notice that he would quit when he got another situation, and yet, when he got one, refused to go, this was held too vague a notice, and not within the statute.

There are other points which will require the attention of tenants, which will be embodied in the remarks relative to landlords, as coming more immediately under consideration in their behalf.

LANDLORDS.

He who lets, grants, or sells, must be possessed of an estate, or interest, in the thing so let, granted, or sold; and before entering upon the granting, &c. it will be necessary to explain

The Nature of Estates.

An estate is that interest which a person has in lands or tenements; and this interest may be for a certain period—or for life—or for the life of another—it may terminate at his decease, or devolve to his heirs—or, lastly, it may be absolute and unlimited, being vested in him and his representatives for ever.

To ascertain these different interests with that precision which is necessary for the various purposes of practical use, estates are usually considered in three points of view.

First. As to the quantity or duration of interest which may be had in them.

Secondly. The time at which the enjoyment of such interest may commence.

Thirdly. The number and relative connexions of the persons enjoying such interest.

Duration of Estate.

Estates, when considered in regard to the duration or quantity of interest which may be had in them, are either of inheritance for years, at will, or at sufferance.

Estates of Inheritance.

First. Such as are absolute or held in fee simple. Being held in fee simple signifies, that the estate is a man's property for *himself and his heirs for ever*, without any condition, limitation, or control whatever.

Secondly. Such as have a qualification attached to them, upon the termination of which the estate is extinguished, in which case they are termed qualified or base fees.

Thirdly. Conditional fees at common law, which is where the estate is granted to a man and the heirs of his body, in exclusion of collateral heirs.—This species of estate, being attended with many inconveniences, was made the object of legislative interference in the statute *de donis*, which gave rise to a new kind of estate, called a fee tail, which differs from the other in too trifling a degree to need a particular definition.

Estates for Life.

Estates for life are either conventional or legal. A conventional estate for life is that which is created by an actual grant from one person to another of lands or tenements, either expressly covenanted to be, or implied to be for that period.

Legal Estates for Life.

Estates tail, after possibility of issue extinct, which is where lands are given to a man and woman, *and the heirs of their bodies lawfully begotten*, and one of them die *before issue had*, in which case the survivor is called tenant in tail, after possibility of issue extinct.

Estates by the Courtesy of England,

Is where a man marries a woman who is possessed of an estate of inheritance, and has by her issue capable of inheriting her estate; in which case he can legally, upon her death, hold the lands, &c. for his life, as tenant by the courtesy; and the mere fact of the existence of a child, though for an instant only, is sufficient to create this estate in the father.

Estate in Dower,

Is where a woman marries a man possessed of or entitled to an estate of inheritance, of which her issue might by possibility have been heir, and her husband dies, upon which the wife is entitled, for her life, to one third part of such estate, as tenant in dower.

Estate for Years,

Is where a man holds lands, &c. for a certain limited number of years; if the lease be but for half a year, or a quarter, the lessee is considered a tenant for years, a year being the least period the law in this case takes notice of.

Estate at Will,

Is where lands, &c. are holden by one party from another during their mutual will and pleasure.

Estate by Sufferance,

Is where a person who once had lawful possession of land, &c. afterwards keeps possession without any title at all.

Estates with regard to Time of Enjoyment,

Are such as are in present possession, or in expectation only.

An estate is said to be in possession, when there exists a right of immediate enjoyment; for instance, an estate bequeathed to A upon the death of B, is said to be in possession of A immediately upon B's decease.

Estate in Remainder,

Is when the estate is limited to take effect and be enjoyed after an estate in possession is determined.

Estate in Reversion,

Is the residue or remainder of the estate left in the grantor, after a particular portion of it is granted to another.

Estates, with respect to the number and connexions of their tenants, may be held,

First. In severalty.
Secondly. In joint tenancy.
Thirdly. In coparcenary.
Fourthly. In common.

Estate in Severalty,

Is when it is held by one person only, in his own immediate right

Estate in Joint Tenancy,

Is held by two or more persons, by a unity or sameness of title, of time, and of possession.

Estate in Coparcenary,

Is when an estate is held by two or more persons by legal descent from their ancestors.

Estate in Common,

Is when an estate is held by two or more persons by distinct titles, but by a unity of possession

An Estate for Life,

Is where a man has lands or tenements to hold during his own life, or the life of some other person, or for some other uncertain period, which by possibility may continue for life. Co. Lit. 41. b.

Of this estate we shall consider

First. How it may be created.
Secondly. What are its incidents.
Thirdly. How it may be destroyed.

Estates for life may be created, not only by a grant to a person expressly for life, but also by a general grant, without defining or limiting any specific estate; as, for instance, if I grant "to John Down my house at Peckham." This makes him tenant for life; for though it cannot be a fee, for want of the word "heirs," it shall be construed to be as large an estate as the words of the donation will bear, and therefore an estate for life. Co. Lit. 42. a.

In order to create a valid estate for life, it is material that it be made to commence on the very day upon which it is granted; for, at common law, no estate of freehold could be created without actual possession being delivered of the thing granted, which cannot be given now of an estate which is not to commence till hereafter. A lease for life, therefore, to begin at Michaelmas next, would be void. 5 Co. 94.

Great attention, therefore, is necessary in the wording a lease for life; for it has been decided, that if it be made to commence "*from* the day of the date," (which has too frequently been done,) the day on which it is dated will be excluded, and the lease consequently void. Loft. Rep. 296. It should be made to commence "from thenceforth," "from the making hereof," or some such other expression, as will include the day of making. Co. Lit. 45. 1 Wils. 176. For

although a lease made under a power in a marriage settlement to grant leases in *possession*, and *not* in reversion, has been held to be good, though made to begin "from the day of the date," Cowp. 711; yet the other is the safer way; and that decision proceeded avowedly on the principle of effectuating the intention of the parties, and to substantiate so necessary a provision in marriage settlements.

The Rights of a Tenant for Life.

A tenant for life has a right to the full use and enjoyment of his estate, and of all profits or advantages which may arise from it: such only excepted as would be materially prejudicial to the persons entitled to the premises in reversion. He may, unless restrained by particular covenants, as may also his lessee or under tenant, take house bote, cart bote, and hay bote, viz. sufficient wood from off the estate for the necessary purposes of repairing, firing, and implements of *husbandry*, without any express assignment thereof in his lease. He has also a right to the pollards and dotards, and to the plashing of quicks and coppice wood, (being careful to fence in stocks, to prevent the growing shoots being destroyed by cattle.) But he is NOT at liberty to cut down timber trees, pull down houses, or commit other waste upon the premises; for this tends to impoverish the estate of the reversioner. Co. Lit. 53. 4 Co. 63. And tenant so doing, may be restrained by injunction in Chancery, and forced to make reparation at Common Law.

If a tenant for life sow his land, and die before the corn, &c. be ripe, his executors shall have the crop and other emblements; for sowing the land was a public benefit, tending to the increase of provisions, and ought to have the utmost encouragement. Nov. Max. c. 9.

Emblements are not only corn and other grain sown, but also roots planted, and in general all annual artificial profits of the land; but fruit trees, grass, and the like, are not reckoned emblements, because not planted annually at the expense and labour of the tenant, but being a natural and permanent profit of the earth. 2 Black. Com. 122.

And it is so where the estate terminates by any casualty, or if the estate of tenant for life be determined by the act of law, for the law worketh no injury.

If, therefore, an estate be granted to a man and woman during coverture, (which would give them a determinable estate for life,) and they be divorced, still the husband

shall have the corn, &c. *previously sown*, for the sentence of the divorce was the act of law. 5 Co. 116.

It is otherwise, where the estate is determined by the wilful act of the party himself.

If a tenant for life forfeit his estate by committing waste, granting his estate in fee, &c. he will not be entitled to emblements, but must leave on the premises whatever may be growing there, at the time of the determination of his estate. Co. Lit. 55. a.

If a woman holds lands *during celibacy*, and marry, this being her own act, she shall lose her emblements; but if she has leased her estate to an under tenant, her marriage will not deprive him, because he was a stranger to the act, or, if not, was unable to prevent it. 1 Rol. Ab. 727.

Executors, &c. can recover rent of lessees, after the death of the tenant for life. 11 Geo. 2, c. 19.

By stat. 8 Anne, c. 14, any person having rent in arrear due on lease for life or lives, may have action of debt for the same, as if due upon lease for years.

Tenant for Life absent for Seven Years presumed Dead.

By 29 Char. II. c. 6, it is enacted, That if a tenant for life shall remain beyond sea, or elsewhere, and absent himself for seven years together, and no sufficient proof be made of his being living, he *shall*, in any action brought by the lessees or reversioner, be accounted dead. But by the same act it is provided, "that if he afterwards return, or appear to be living, he shall recover the intervening profits of the land, *with interest for the same.*"

An estate for life will moreover determine by the commission of any legal act of forfeiture; as by committing waste, granting a greater interest than the tenant is possessed of, or, in short, the doing any thing which is inconsistent with the nature of this estate.

Estates for Years.

An estate for years may be defined to be a contract or agreement between the lessor (that is to say, the person making the lease,) and the lessee, (the person to whom it is made,) for the possession or profits of lands or tenements on the one side, and the rent or recompence to be paid on the other, for some determined period. 2 Bac. ab. tit. "Leases." It is immaterial whether it be for the complete term of a year, or for a longer or shorter period; for though it be but for half a year, or a quarter, or any less period, it is still respected as an estate for years. 2 Black Com. 140.

Who may and who may not Grant an Estate, or make a Lease for Years.

All persons possessed in fee simple, fee tail, for term of life, or for years, of lands or tenements, may grant leases thereof, for any term LESS than their own respective interests; they are not restrained from granting their whole interest, only in that case the conveyance loses the name and qualities of a lease, and assumes some other denomination.

Tenant in fee simple, having an absolute and unlimited interest in his estate, may consequently grant leases of all or any part thereof, for life or years, or otherwise, at his pleasure, without limitation or restraint.

We shall confine ourselves at present to a consideration of a simple term of years, as leasing comes under the more immediate purposes of this portion of our Work.

Leases exceeding the term of three years must be in writing, yet no particular form of words is necessary to constitute a good lease; for a lease for years being no other than a contract for the possession and profits of lands on the one side, and a recompence to be paid on the other, any words, *that in their import are sufficient* to show such contract, will, in law, amount to a lease. If, therefore, I covenant with another, that he shall hold premises for such a time, this is a good lease; for there are sufficient words to prove an agreement, that the one shall quit and the other take possession of the land. Cro. Eliz. 173. 1 Co. 129. 11 Mod. 42. 12 ibid. 610. 5 Term Rep. 163. 2 Anstr. 418. But these agreements are in all cases to be avoided, as leading to misunderstandings and cavil; and the agreements made out in clear and intelligible language.

A paper purporting to be only an *agreement* for a *future lease*, will, if it contain words of present contract, and it appear to have been the intention of the parties that it should have the effect of a lease, be good as such. 2 Bl. Rep. 975. 1 Term Rep. 735. 2 ibid. 739.

A lease may bear date as far back as the parties choose, but not on a day subsequent to its execution.

The necessity of reading Leases.

It is requisite to the validity of a lease, that it be read by or to the parties, *if they require it;* for it may otherwise be avoided, as it also may, if read falsely, with an intent to deceive. 2 Co. 3, 11. But, if *not required* to be read, the lease will be valid; and, in order to render an agreement binding, there should be inserted a penalty for not performing it.

It must moreover be signed and sealed by the parties, or by their agents properly authorised. 1 Anst. 229. And, although it ought properly to be signed by both parties, yet it will be good if signed only by the lessor, provided the lessee accept of it. If, however, it be signed by the lessee only, it will operate nothing, because nothing can pass by it. Owen. 100.

The lease must be delivered, either by the lessor himself, or by his attorney lawfully authorised, in the presence of one or more witnesses; the form of doing which usually is, for the party to place his fore finger upon the seal, after having put his signature to it, and say, "I deliver this as my act and deed." Any words, however, importing as much, will be equally good; and the witnesses should subscribe a memorandum on the back of the lease, of the due execution.

If no time is mentioned in the lease, at which it is to begin, it will commence on the day it bears date; and, if the date happens to be omitted, it will commence on the day it is executed. Co. Lit. 46. b. and see Stiles, 118.

In a lease *for years*, the time when the term is to begin, and when it is to end, must be certain and determinate, or, at least, such as, by reference to something else, may be reduced to a certainty, otherwise the lease will be void, therefore, *a lease for so many years as such a one shall live*, would be void: but a lease for so many years as such a one *shall name*, is good; because, although it is at present uncertain how long the estate will continue, yet it will be reduced to a certainty as soon as the term is named. Noy, Max. by Barton, p. 86. Co. Lit. 45. And the term must be named during the lives of the lessor and lessee, or it will not be good. 1 Co. 156. a. For it is essential that there be both lessor and lessee living at the time the lease is made. 3 Bur. 429.

The Nature of Covenants and Agreements, and their Effect in Leases for Years.

A covenant in a deed, is an agreement, consent, or promise, that something is already done, or to be done; or that something shall or shall not be done hereafter. Plow. 338

A proviso is a condition inserted in a deed or writing, upon the observance of which the validity of the deed depends. It differs from a covenant in this, that a proviso is in the words of and binding *upon* BOTH *parties*, but a covenant in the words of the *covenantor only*. Covenants are either express or implied Express covenants are such

as are expressly mentioned in the deed, as a covenant that the lessee shall keep the demised premises in repair; implied, where the thing to be done, or to be omitted, is not expressly provided for in the deed, but inferred by law from the nature of the contract; as, if a lease for years be made, by the words demise or grant, the law *implies* a covenant on the part of the lessor, that he shall permit the lessee quietly to enjoy the thing demised. 4 Co. 80. Carth. 98. In respect to express and implied covenants, it is material to observe, that an implied covenant is in all cases controlled within the limits of an express covenant, 4 Co. 80. which furnishes us with a useful caution, not to introduce into leases any more express covenants than the case may absolutely require, lest the implied covenants should be thereby rendered ineffectual.

To whom a Lease for Years may be granted, and to whom not.

In order that a lease may be made valid, it must be granted to one born within the three kingdoms of England, Scotland, or Ireland, or naturalised therein; for, by 32 Hen. VIII. c. 16, all leases of any dwelling-house or shop, made to any stranger, or artificer, or handicraftsman, born abroad, *not being* a denizen, shall be void. Both the lessor and the lessee are also, by the same statute, subject to a penalty of £5.

Lord Coke says, that leases for years to an alien, of land, meadows, &c. are forfeitable to the king on office found, (that is to say, on his being found to be an alien,) but not before. Co. Lit. 2. b. It has been held, however, that an alien merchant may take a house for his own residence, but it shall not go to his executors. The reason given for these laws (besides the general policy, that foreigners may not get too much footing in the kingdom,) is, that they may be punished for their presumption, in attempting to acquire landed property in the king's dominions. 1 Black. Com. 372.

Infants, or Persons under Twenty-one Years of Age.

A lease made to an infant is not absolutely void, but voidable only at his election on his coming of age; and, if he does not then avoid it, but continues in possession, he substantiates the lease, and is chargeable for the rent. Cro. Jac. 320, and 2 Term. Rep. 159.

To make a good lease, there must be a lessor, or landlord, who is in law able to grant the lease,—a lessee, or tenant, capable of taking the thing leased,—and a sufficient description of the estate demised. After which, the first

requisite to the validity of the lease is, that the parties be not only free from the disabilities before mentioned, but be also perfectly free from restraint; for if it be made or accepted from compulsion, or for fear of imprisonment, or the like, it will be void. 2 Black. Com. 292.

It is generally necessary that the lease be in writing; for by stat. 29 Char. II. c. 3. made for the prevention of frauds, it is enacted, that "All leases, estates, interests, either freehold or term for years, or any uncertain interests, not being customary or copyhold, of, into, or out of any messuages, lands, tenements, &c. *not* put into *writing*, and signed by the parties creating or making the same, shall have the force and effect of estates *at will* only, and shall not, either at law or in equity, be taken to have any greater effect, except only leases *not* exceeding three years from the making, whereupon the rent reserved shall be at least two-thirds of the improved value."

Upon which statute it has been held, that a lease by parole for three years only, if it be made to commence *after* the day of the date, will be void. 12 Mod. b. 10. Ld. Raym. 736; though a lease for less than three years will be good. 1 Stra. 651.

Being seised or entitled to an estate, a man becomes desirous, for his profit or convenience, to let the same, or a part of it, to another.

In considering the letting of apartments, or the portion of a dwelling, the reader is referred to what has been already said under the head of Tenants.

Less caution is necessary in letting unfurnished than furnished apartments, because the remedy, in the former case, is in the landlord's hands.

Form of Agreement for Letting Apartments.

MEMORANDUM made this 5th day of June, in the year of our Lord 1833, between Anthony Brown, of Dean-street, Holborn, in the county of Middlesex, furrier, and Charles Davis, of Gate-street, Lincoln's-inn-fields, in the same county, tailor, as follows:

The said Anthony Brown doth let unto the said Charles Davis the rooms and apartments following, viz. an entire first floor, the front kitchen and cellar under it, and a front garret, being part of the house which he the said Anthony Brown now lives in, situate and being in Dean-street, aforesaid; to have and to hold the said premises for and during the term of half a year, to commence from Midsummer-day next after the date hereof, at and under the yearly rent of £30 of lawful money of Great Britain, payable

quarterly, by even and equal portions, the first quarterly payment to be made on Michaelmas-day next ensuing the date hereof. And it is further agreed, by and between the parties hereto, that the said Charles Davis, after the expiration of the said half year, may hold and enjoy the said premises from quarter to quarter, so long as both parties shall agree, at the rent of £7 : 10*s*. for every quarter; and each party is at liberty to give a quarter's warning for the quitting possession of the said premises. And that it shall not be deemed necessary on either side, that such quarter shall expire at the same time of the year as the date of these presents, or the commencement of this term. And it is also further agreed between the said parties, that when the said Charles Davis shall leave the said premises, he shall leave the glass windows, and other things belonging to the said premises, in as good condition as they now are (reasonable wear only excepted). As witness our hands, the day and year first above written.

Witness,

The landlord has a right of entry, at any reasonable time, into his tenant's apartments, first informing him of his intention, to view the condition of the same, and ascertain if damage done.

In a case *not tried*, it was the late attorney-general's opinion, that a landlord was *justified in breaking open* the door of his lodger, after knocking and receiving no answer, when smoke issued from the room, and he believed it to be on fire.

For Letting a House.

MEMORANDUM made this 5th day of March, in the year of our Lord 1833, between Anthony Brown, of Dean-street, Holborn, in the county of Middlesex, furrier, and Charles Davis, of Gate-street, Lincoln's-inn-fields, in the same county, tailor, as follows:

The said Anthony Brown doth hereby demise and let unto the said Charles Davis a house and garden, with the appurtenances, situate in Bedford-row, in the county of Middlesex, late in the possession of Edward Franks, now of Queen-square, for the term of three years certain, and a quarter's warning or notice to be given or left, in writing, by either of the said parties, to or for the other of them, at the end of the said three years. The rent thereof to commence from Lady-day next, at and under the yearly rent of £30, payable quarterly; the first payment thereof to begin and be made at Midsummer-day next.

The said Charles Davis doth agree to take the said house of the said Anthony Brown for the term, and at the said rent, payable in manner aforesaid: and also, that he will, at his own cost and charges, make good, or cause to be made good, and put into the same or as good condition and order as the same lately was in, the kitchen, or ground room of or belonging to the said house, which he has now converted, or caused to be converted, into a cheesemonger's shop, at the expiration or other sooner determination of this present demise; and also will then leave on the said premises, for the use of the landlord, the paper-hangings in the chambers, the back window-shutters, the stone hearth, two shelves in the closet, one shelf in the kitchen, and another shelf in the wash-house of and belonging to the said house. As witness our hands, the day and year first above written.

Witness,

This agreement is a substitute for a lease: but, if parties be desirous of subsequently possessing a lease, a covenant to that effect may be introduced thus: —

A Covenant for a Lease, at the Option of the Lessee.

And if after the said term of three years be expired, he the said Charles Davis shall be minded or desirous to have and take a lease of the said premises, with the common and usual covenants, for a further term of three or seven years, at £30 a year, payable quarterly, and of such his intention and desire shall give notice in writing to the said Anthony Brown, within three months after the expiration of the said term of three years, that then he the said Anthony Brown shall and will grant him such lease, for such further term or terms, and at such rent, and payable as aforesaid, the costs and charges of such lease (if demanded by the said Charles Davis) to be paid and discharged equally, by and between the said parties. As witness our hands, the day and year first above written.

Witness,

Agreement for Letting a Room in a Public House, with Covenant for Painting, &c. &c. and for granting a Lease if required.

It is agreed this 5th day of March, in the year of our Lord 1833, between Christopher Gapp, of High-street, St. James's, Clerkenwell, in the county of Middlesex, victualler, and Charles Beckett, of the same place, grocer, as follows, viz.

The said Christopher Gapp agrees to let, and the said

Charles Beckett agrees to take, all that front room, being on the first floor, immediately over the shop, in the possession of the said Charles Beckett, and part and parcel of the White Lion public-house, in High-street, aforesaid, now in the possession of the said Christopher Gapp, with the ways, conveniences, and appurtenances to the same room belonging and now used, for and during the term of ten years, commencing from Lady-day next, at and under the yearly rent of £12, payable half-yearly, the first payment thereof to be made on Michaelmas-day next. And the said Charles Beckett hereby agrees to pay, or cause to be paid, the said yearly rent, according to the reservation aforesaid, except during such time as the said room may be uninhabitable by reason of accidental fire. And also, once in every three years of the said term, to paint, or cause to be painted, the outside of the windows belonging to the said room, with three coats of oil colour. And the said Christopher Gapp hereby agrees to pay all taxes, charges, or assessments, which are or may be taxed, charged, assessed, or become payable in respect of the said room. And also, that he the said Christopher Gapp shall and will, when thereunto requested by the said Charles Beckett, grant and execute, or cause to be granted and executed, unto the said Charles Beckett, his executors, administrators, or assigns,* a valid lease of the said room and premises for the term, subject as aforesaid. And it is hereby agreed, that such lease shall contain such or the like covenants and clauses as those hereinbefore contained, and all other customary clauses and covenants. And, lastly, it is agreed, that the expenses incurred by the preparation of and incident to this agreement, and of the said lease and counterpart thereof, shall be paid equally between the said parties. In witness whereof, the said parties have set their hands, the day and year first above written.

Witness,

Agreement between the Trustees of certain Estates and Tenants, for the Occupation of a Farm, by a Tenancy from Year to Year.

An Agreement made the 12th day of July, 1833, between James Houson and William Spear, (trustees of the estates

* The addition of the word "assigns" is here very important, and it should be well understood that this accords with the intentions of *both parties*; for though a man ought and must make a lease to the executor or legal representative of a tenant, he is not obliged, unless under *his own* covenant, to convey to any stranger that that tenant may choose to put in his place.

of J. H. P. Clarke, esq., Mrs. P. Clarke, and others,) of the one part, and William Wilkins and John Wilkins of the other part. The said James Houson and William Spear, as such trustees as aforesaid, do hereby set and to farm let unto the said William Wilkins and John Wilkins all that messuage, &c. together with all and every houses, out-houses, edifices, buildings, ways, paths, passages, waters, water-courses, rights, members, and appurtenances whatsoever, to the said premises hereby demised, and every part thereof belonging or in anywise appertaining, (except all timber and timber-like trees, pollards, standards, saplings, with the lops and tops thereof, and all other trees, wood, and underwood, and all mines and minerals whatsoever, now or hereafter standing, growing, or being upon or under the said premises; with full liberty to cut down, stub up, lop, top, dig for, work, get, and carry away the same, respectively, in and by all usual ways and means, making reasonable satisfaction for any damage to be done in pursuance thereof; and also full liberty to enter into and upon the said premises, to view and see the state, condition, and usage thereof, and for all other just and reasonable purposes whatsoever;) to hold the said premises, with their appurtenances, (except as hereinbefore excepted,) unto the said W. W. and J. W. their executors, administrators, and assigns, from the 25th day of March now last past, for the term of one whole year from thence next ensuing, and so on from year to year, until the said J. Houson and W. Spear, their executors, administrators, or assigns, shall give six calendar months' notice, in writing, to the said W. W. and J. W. their executors or administrators, or the said W. W. and J. W. their executors or administrators, shall give the like notice, in writing, to the said J. Houson and W. Spear, their executors, administrators, or assigns, to determine the same; yielding and paying therefore, yearly, during the said term, unto the said J. Houson and W. Spear, their executors, administrators, or assigns, the rent of £200, by equal half-yearly payments, on the 29th day of September, and 25th day of March, in every year, without any deduction thereof; and the further rent of £10, for every cart or waggon load of dung, and so in proportion for any less quantity, which, during the last year's occupation, shall be carried away from the said premises, or sold or converted by the said W. W. and J. W. their executors or administrators, to and for his or their own use; and also the further sum of £10, for every acre, and so in proportion for any less quantity, of meadow

or pasture ground, which shall be ploughed or used in tillage, without the consent, in writing, of the said J. Houson and W. Spear, their executors, administrators, or assigns; and the like additional rent of £10 for every acre of such part of the lands hereby demised, above one-third part thereof, which shall be broken and ploughed up, and after that rate for any less quantity than an acre; and the additional rent of £10 per acre, and so on in proportion for any less quantity of the arable lands hereby demised, which shall be ploughed or sown for more than three years, without a summer fallow; and also the like rent of £5 for every acre less than one-fourth part of all the said arable lands, which, during the last year's occupation, shall not be well and in a husband-like manner ploughed, manured, and left sown with wheat, according to the custom of the country, to and for the use of the said J. Houson and W. Spear, their executors, administrators, and assigns, and so in proportion for any less quantity, (being allowed for labour and seed only); the first of which payments to begin on such of the said days of payment as shall next happen after the same shall become forfeited as aforesaid. Provided always, that if the said yearly rent of £200, and the several other further or additional rents or payments, or any part thereof, shall be behind or unpaid, by the space of ten days next over either of the said days whereon the same ought to be paid as aforesaid, that then it shall be lawful for the said J. Houson and W. Spear, their executors, administrators, and assigns, into the said demised premises, or any part thereof, in the name of the whole, to re-enter, and the same to have again, as in their first estate; and the said W. W. and J. W. their executors, administrators, and assigns, from the possession thereof utterly to expel and amove. And the said W. W. and J. W. do hereby agree with the said J. Houson and W. Spear, their executors, administrators, and assigns, that the said W. W. and J. W. their executors or administrators, shall and will truly pay unto the said J. Houson and W. Spear, their executors, administrators, or assigns, the said yearly rent of £200; and also the several additional rents hereinbefore reserved, on the several days or times the same shall happen to accrue and become due respectively in manner aforesaid, without any deduction whatever; and also pay and discharge the land tax, and all other taxes and impositions whatsoever, either parliamentary, parochial, or otherwise; and also shall and will uphold and keep all and singular the said demised premises, and every part thereof, and all out-

buildings, hedges, ditches, and other appurtenances, in, by and with all needful and necessary reparations and amendments, when, where, and as often as need or occasion shall require, (being allowed rough timber to be set out for that purpose.) And the said demised premises being so well upheld, repaired, secured, and preserved, shall and will, at the determination of this demise, quietly surrender and yield up into the possession of the said J. Houson and W. Spear, their executors, administrators, or assigns; and also that the said W. W. and J. W. their executors or administrators, shall not lop or top any of the timber or other trees growing upon the said demised premises, without the consent, in writing, of the said J. Houson and W. Spear, their executors, administrators, and assigns; and also that the said W. W. and J. W. their executors and administrators, shall and will fodder out, feed, and spend upon the said demised premises with cattle, all the hay, straw, clover, and other produce, that shall be grown upon the said premises; and shall spread upon the said demised premises, or some part thereof, where most wanted, in a husband-like manner, all the muck, dung, compost, and manure, that shall arise from the hay, straw, clover, and other produce, to be grown on the said premises; and also shall and will, at the determination of this demise, leave all the dung, compost, and other manure, hay, straw, and fodder, on the said premises, which shall arise and be made thereon during the last year's occupation thereof, to and for the use of the said J. Houson and W. Spear, their executors, administrators, and assigns, without being paid any thing for the same, (the said W. W. and J. W. their executors and administrators, being permitted to use the barns for thrashing, and to eat with cattle the hay, straw, and other fodder, in the said premises, until the day of then next following.) And also, that the said W. W. and J. W. their executors or administrators, shall not, during the said term, set or underlet the said demised premises, or any part thereof, or otherwise part with the possession thereof, to any person or persons whomsoever, for all or any part of this demise, without such consent, in writing, of the said J. Houson and W. Spear, their executors, administrators, or assigns, as aforesaid. And further, that the said W. W. and J. W. their executors and administrators, shall and will, during this demise, use, treat, and manage, all and every the premises hereby demised in a good and proper manner, according to the custom of the country. And it shall be lawful for the said J. Houson

and W. Spear, their executors, administrators, and assigns, agents, servants, and workmen, to enter into and upon the said demised premises, to see the condition thereof, and for all other just and reasonable purposes. In witness whereof, the said parties have set their hands, the day and year first above written.

Witness,

All these agreements have a stamp of £1, which must be impressed within twenty-one days, under a penalty; for which see the foregoing pages.

These agreements, though under hand only, are as binding as any other instrument, and may be established by the filing a bill in Chancery, or by an action at Common Law.

Where the agreement *contains covenants*, &c: and is in the *nature of a lease*, it should receive *a lease stamp* before signature. At the Solicitor's Office, Somerset House, they will determine this, as the clerk there marks the amount of the stamp to be impressed upon the instrument.

If you have neglected the stamping of an agreement that requires a lease stamp, it will be necessary to petition the commissioners, which is done in the following form:—

The humble petition of John Black, of, &c.

Sheweth,

That the agreement hereto annexed was entered into on the of last; and that petitioner was informed and believed that it required a stamp duty of £1 only, and that he had twenty-one days to stamp the same, and that his not obtaining a stamp previous to the signature, arose from the impossibility of getting one at the place and time at which it was executed, and his ignorance of the fact of its being required to be any thing but a common agreement stamp, and not with any view to defraud his Majesty's Revenue.

And your petitioner prays that the same may be directed to be impressed with the proper duty.

JOHN BLACK.

A useful Form for an Agreement for Building a House.

MEMORANDUM made this of in the year of our Lord, between Henry Brown, of Drury-lane, in the county of Middlesex, on the one part, and Charles Davis, of St. Martin's-lane, in the same county, of the other part, as follows:

The said Charles Davis, for the consideration hereinafter mentioned, doth agree with the said Henry Brown, that he

the said Charles Davis, or his assigns, will, within the space of three calendar months next following the day of the date of these presents, find and provide all fit and proper materials and things, and erect, build, and finish, in a good, sound, substantial, and workman-like manner, one brick house or building, on a piece or parcel of waste ground, situate in King-street, Camden Town, in the county of Middlesex, according to a plan thereof hereunto annexed, and of the dimensions following, viz. [*here insert the dimensions of the building, and scantlings of the timber intended to be used in the building thereof.*] And the said Henry Brown, for the considerations aforesaid, doth agree with the said Charles Davis, well and truly to pay, or cause to be paid, unto the said Charles Davis, the sum of £700, of lawful money of Great Britain, in manner following, that is to say, £100, part thereof, as soon as the foundation of the said house shall be laid; £200, other part thereof, when the brick-work of the said house shall be carried up and tiled in; and the remaining £400, being in full payment of and for building the said house, when the same shall be completed, inside and out, fit for occupation, subject to the approbation of Edward Franks, surveyor to the said Henry Brown. And, lastly, the said Henry Brown and Charles Davis do further agree by these presents, to execute to each other, with all convenient speed, an article of agreement, in the penalty of £200, for the true performance of all and every the matters and things aforesaid. As witness our hands, the day and year first above written.

Witness,

We shall now proceed to some precedents for Leases, that will answer in most cases; the parties taking care to vary the *facts* according to the circumstances, for which we shall give further directions in our following pages.

Form of an ordinary Lease.

This Indenture, made the of in the year of the reign of our Sovereign Lord, by the grace of God, of Great Britain and Ireland, King, Defender of the Faith, and in the year of our Lord between John Stone, of Charlotte-street, Bloomsbury, in the county of Middlesex, of the one part, and George Toms, of Hatton-wall, in the same county, of the other party, Witnesseth, That for and in consideration of the yearly rent, covenants, and agreements hereinafter contained, on the part and behalf of the said George Toms, his executors, admi-

nistrators, and assigns, to be paid, done, and performed, he the said John Stone hath demised, set, and to farm let, and, by these presents, doth demise, set, and to farm let, unto the said George Toms, all [*here insert the premises demised, with a particular description thereof,*] situate, standing, and being in Crown-street, in the parish of Saint Giles, in the county of Middlesex, and adjoining, on the south part thereof, to the premises lately in the tenure or occupation of Henry Tring, together with all cellars, sollars, chambers, rooms, yards, gardens, lights, easements, ways, passages, waters, water-courses, profits, commodities, and appurtenances whatsoever, to the said messuage or tenement and premises belonging, or in anywise appertaining. To have and to hold the said messuage or tenement, and premises hereinbefore-mentioned, or intended to be hereby demised, with their and every of their appurtenances, unto the said George Toms, his executors, administrators, and assigns, from the feast day of the Nativity of St. John the Baptist, now next ensuing the date of these presents, for and during, and unto the full end and term of seven years from thence next ensuing, and fully to be complete and ended. Yielding and paying, therefore, yearly and every year, during the said term of seven years, unto the said John Stone, his executors, administrators, and assigns, the yearly rent or sum of £30 of lawful money of Great Britain, at the four most usual feast days, or times of payment of rent in the year; that is to say, the feast day of St. Michael the Archangel, the Birth of our Lord Christ, the Annunciation of the Blessed Virgin Mary, and the Nativity of St. John the Baptist, by even and equal portions, the first payment thereof to begin and be made on the feast day of St. Michael the Archangel now next ensuing. And the said George Toms for himself, his executors, administrators, and assigns, doth covenant, promise, and agree, to and with the said John Stone, his executors, administrators, and assigns, by these presents in manner and form following; that is to say, That he the said George Toms, his executors, administrators, and assigns, or some or one of them, shall and will yearly, and every year during the said term of seven years, hereby demised, well and truly pay, or cause to be paid, unto the said John Stone, his executors, administrators, or assigns, the said yearly rent or sum of £30, hereby reserved in the manner and proportions, and on the days and times above limited and appointed for payment thereof, according to the true intent and meaning of these presents. And also shall and

will, at his, their, or some or one of their own proper costs and charges, from time to time, and at all times hereafter during the said term hereby granted, when, where, and as often as need or occasion shall be or require, well and sufficiently repair, support, uphold, sustain, maintain, pave, purge, empty, cleanse, scour, glaze, amend, and keep the said messuage or tenement, and premises hereby demised, and every part thereof, with the appurtenances thereunto belonging, in, by, and with all manner of needful and necessary reparations, supportations, glazings, pavings, purgings, scourings, cleansings, emptyings, and amendments whatsoever; and the said messuage or tenements, with the appurtenances hereby demised, so well and sufficiently upheld, sustained, maintained, repaired, paved, purged, emptied, cleansed, scoured, glazed, amended, and kept, at the end, or other sooner determination of this lease, which shall first happen, shall and will peaceably and quietly leave, surrender, and yield up, unto the said John Stone, his executors, administrators, or assigns, together with all such fixtures and things as are mentioned or set forth in the schedule or inventory thereof hereunder written, in as good plight and condition as the same now are, (reasonable use and wearing thereof, and all inevitable accidents by fire, which may happen to burn down and consume the premises or any part thereof, in the meantime only excepted). And further, that it shall and may be lawful to and for the said John Stone, his executors, administrators, and assigns, with workmen and others, or without, twice or oftener in every year during the time hereby granted, at all convenient times in the daytime, to enter and come into and upon the said demised premises, and every or any part thereof, there to view, search, and see, whether the same be well and sufficiently supported, upheld, sustained, maintained, repaired, purged, emptied, cleansed, scoured, glazed, and amended, as the same ought to be, according to the true intent and meaning of these presents, and of all the defects, defaults, decays, lacks, and wants of reparations, and amendments, which, upon every or any such view or views shall be found, to give or leave notice or warning, in writing, at the said demised premises, or some part thereof, unto or for the said George Toms, his executors, administrators, or assigns, within the time or space of three months from thence next following; within which said time or space of three months after every such notice or warning shall be given or left as aforesaid, the said George Toms,

for himself, his executors, administrators, and assigns, doth covenant, promise, and agree, to and with the said John Stone, his executors, administrators, and assigns, by these presents, from time to time during this demise, well and sufficiently to repair and amend the same accordingly. Provided always, that if it shall happen that the said yearly rent of £30 pounds, or any part thereof, shall be behind or unpaid for the space of twenty-eight days, next over or after any of the said feast days, or times of payment, on which the same ought to be paid as aforesaid, being lawfully demanded; or if the said George Toms, his executors, administrators, or assigns, and each and every of them, do not in and by all things well and truly observe, perform, fulfil, and keep all and singular the covenants, grants, articles, and agreements in these presents contained, which on his and their parts and behalfs are or ought to be observed, performed, fulfilled, and kept, according to the true intent and meaning of these presents, that then, and from thenceforth in any such case, and at all times then after, it shall and may be lawful to and for the said John Stone, his executors, administrators, or assigns, into the said messuage or tenement and premises hereby demised, or into any part thereof in the name of the whole, wholly to re-enter, and the same to have again, repossess, and enjoy, as in his and their first and former estate; and the said George Toms, his executors, administrators, and assigns, and all other the occupiers of the said premises, thereout and from thenceforth utterly to expel, put out, and amove, this indenture or any thing herein contained to the contrary thereof in any wise notwithstanding. And lastly, the said John Stone, for himself, his executors, administrators, and assigns, doth covenant, promise, and agree, to and with the said George Toms, his executors, administrators, and assigns, by these presents, that he the said George Toms, his executors, administrators, and assigns, paying the said yearly rent herein before reserved at the place, and on the several feast days and times before limited and appointed for payment thereof, and observing, performing, paying, fulfilling, and keeping, all and singular the payments, covenants, grants, articles, provisoes, conditions, and agreements, in these presents contained, which on his and their parts and behalfs are or ought to be observed, performed, fulfilled, and kept, according to the true intent and meaning of these presents, shall and lawfully may, peaceably and quietly have, hold, occupy, possess, and enjoy the said demised premises, with their and every of their appurte-

nances, during the said term of seven years hereby granted, without the lawful let, suit, trouble, molestation, denial, or eviction, of or by the said John Stone, his executors, administrators, or assigns, or any of them, or of or by any other person or persons whatsoever, lawfully having, or claiming to have, any right, title, or interest, in or to the said demised premises with the appurtenances, or in or to any part or parcel thereof, by, from, or under the said John Stone, his executors, administrators, or assigns, or any of them, or by or through his, their, or any of their means, consent, or procurement. In witness whereof the said parties to these presents have hereunto interchangeably set their hands and seals, the day and year first above written.

When it is a running Term, as for Seven or Fourteen Years, with power for one or either party to shorten that term at pleasure, this Proviso must be added before the words, "In witness."

And lastly, it is hereby declared and agreed by and between the said parties hereto, and these presents are upon this express condition nevertheless, that in case the said George Toms, his executors, administrators, or assigns, shall be minded or desirous to quit or leave the said hereby demised premises, at the end or expiration of the first seven years, of the said term of fourteen years hereby demised, and shall and do give notice in writing under his, their, or any of their hands, of such, his, their, or any of their intention and desire, to or for the said John Stone, his executors, administrators, or assigns, at his or their dwelling-house, or last place of abode, six calendar months before the end or expiration of the first seven years, of the said term of fourteen years hereby demised, that then, and in such case, it shall and may be lawful to and for the said George Toms, his executors, administrators, and assigns, and every of them, to quit and leave the said hereby demised premises at the end of the said seventh year of the said term hereby demised, according to such notice, so to be given or left as aforesaid, he or they first paying all rent then due, and in arrear, and leaving the premises in repair, pursuant to the covenants aforesaid. And in case the said John Stone, his executors, administrators, or assigns, shall likewise be minded and desirous to take the said premises into his or their own hands at the expiration of the said seventh year, and of such his, their, or any of their intention or desire, shall give or leave notice in writing, at the said premises, to or for the said George Toms, his executors, administrators, or

assigns, six months before the expiration of the said seventh year, that then and in such case the said John Stone, his executors, administrators, or assigns, shall be at liberty to enter upon and take possession of the said premises, at the expiration of the said seventh year of the term hereby demised, according to such notice so to be given or left as aforesaid, any thing hereinbefore contained to the contrary in anywise notwithstanding.

[NOTE.—This proviso is mutual, and should be varied, according to the nature of the agreement between the parties, for it is more common to leave the *tenant* only the power of determining the lease at the shorter period.]

As one of the most important points in a lease is accurate description, it is common to insert a plan or picture of the premises in the margin. We give a modern form of a lease, settled by an eminent conveyancer, in which this plan has been resorted to.

Lease, with a Plan, to ensure identity of Premises.

THIS INDENTURE, made the 20th day of August, in the year of our Lord 1833, between John Bull, of Monkwell-street, in the parish of St. Giles, Cripplegate, in the city of London, bricklayer, of the one part, and Edmund Graves, of Christopher's-alley, in the parish of St. Leonard, Shoreditch, in the county of Middlesex, carpenter, of the other part.

Whereas the said Edmund Graves hath agreed with the said John Bull for a lease of the two messuages or tenements, with the appurtenances hereinafter described, to hold the same in manner hereinafter mentioned, under and subject to the rent and covenants hereinafter contained: Now this Indenture witnesseth, that for and in consideration of the yearly rent hereinafter reserved, and the covenants and agreements hereinafter contained, on the part of the said Edmund Graves, his executors, administrators, and assigns, to be respectively paid, observed, and performed, the said John Bull hath granted, demised, and leased, and by these presents doth grant, demise, and lease, unto the said Edmund Graves, his executors, administrators, and assigns, all those two messuages or tenements situate, standing, and being on the north side of Christopher's-alley, Long-alley, in the parish of St. Leonard, Shoreditch, in the county of Middlesex, respectively numbered 33 and 32, which said messuage or tenement numbered 33 is the corner house, next Earl-place, now in the tenure or occupation of the said Edmund Graves; and the

said other messuage or tenement, number 32, is the adjoining house, towards the east, and now in the occupation of Edmund Graves, his under tenants, or assigns, under or by virtue of a lease granted to him, (which will expire at Midsummer, 1835,) all which said premises are more particularly delineated and described in the plan thereof, drawn in the margin of these presents.

NORTH.

Sheds.
Yard.
19 feet.
WEST.
EAST.
48 feet
Earl Place
28 feet.
No. 33.
No. 32
15 feet 6 inches
15 feet.
Christopher's Alley.

SOUTH.

together with all and singular outhouses, buildings, gardens, sheds, stables, yards, cellars, vaults, benefit and advantage of ancient and other lights, ways, paths, passages, drains, pipes, waters, water-courses, wells, sewers, rights, privileges, and all other rights, privileges, advantages, conve-

rences, and appurtenances whatsoever, to the said two messuages or tenements and premises belonging, or in anywise appertaining, or with the same or any of them, now or heretofore usually holden, used, occupied, or enjoyed. except and always reserved out of these presents and the demise hereby made, the free use of all such drains, cess-pools, and water-courses, as now do or hereafter may run or proceed to or under the said hereby demised premises, or any of them, from any other messuages or tenements belonging to the said John Bull, his heirs, or assigns, adjoining or near thereunto. To have and to hold the said two messuages or tenements, and all and singular other the premises hereby demised or intended so to be, with the rights, members, and appurtenances to the same belonging, unto the said Edmund Graves, his executors, administrators, and assigns, from the 24th day of June now last past, for and during the full and complete term of thirty-one years, from thence next ensuing, (subject nevertheless to the lease granted of the messuage or tenement numbered 32, and which lease will expire on the 24th of June, 18[illegible], and for which no rent is payable, nor can any occupation or possession be claimed by the said Edmund Graves, his executors, administrators, or assigns, until after the expiration of the same lease,) yielding and paying, for the first two years of the said term, for the said messuage or tenement numbered 33, being the corner house aforesaid, unto the said John Bull, his heirs, and assigns, the yearly rent or sum of £14 of lawful British money, by equal quarterly payments; and yielding and paying yearly and every year, for twenty-nine years, the residue of the said term of thirty-one years, for the said two messuages and premises hereby demised, unto the said John Bull, his heirs, and assigns, the entire yearly rent or sum of £30, by equal quarterly payments, namely, on the 29th day of September, the 25th day of December, the 25th day of March, and the 24th day of June, in every year; all which said yearly rent to be free and clear of and from the land and sewer tax, and all manner of other taxes, rates, assessments, deductions, and abatements whatsoever, whether already or at any time hereafter to be imposed upon or payable for or in respect of the said premises, or any part thereof, or the said John Bull, his heirs, or assigns, or the said Edmund Graves, his executors, administrators, or assigns, in respect thereof, and whether any such future taxes, rates, or assessments, shall be in the nature of those in being or not, (the present or any future tax upon property payable by the

landlord of the said premises in respect thereof only excepted); the first quarterly payment of the said yearly rent of £14, to begin and be made on the 29th of September now next, and the first quarterly payment of the said yearly rent of £30, to begin and be made on the 29th day of September, 1835. And the said Edmund Graves, for himself, his executors, administrators, and assigns, doth hereby covenant, promise, and agree, with and to the said John Bull, his heirs and assigns, in manner following; that is to say, that he the said Edmund Graves shall and will, from time to time, and at all times during the continuance of the said term hereby granted (except as hereinafter is mentioned,) well and truly pay, or cause to be paid, unto the said John Bull, his heirs, and assigns, the said yearly rent, in lawful money aforesaid, upon the several days, and in the manner hereinbefore mentioned and appointed for payment thereof, and according to the true intent and meaning of these presents; and also well and truly pay, satisfy, and discharge all and all manner of taxes, rates, duties, assessments, and impositions whatsoever, whether parliamentary, parochial, or otherwise, as now are, or which shall or may, at any time or times hereafter, during the continuance of the said term hereby granted, be lawfully assessed, or imposed upon, or payable, in respect of the said hereby demised premises, or any part thereof, or on the said yearly rent hereby reserved, or any part thereof, or on the said John Bull, his heirs, or assigns, in respect thereof; and whether any such future taxes, rates, duties, or assessments, shall be in the nature of those now in being or not (the property tax aforesaid only excepted). And also the said Edmund Graves, his executors, administrators, and assigns, shall and will, at all times, and from time to time, during the continuance of the said term hereby demised, well and sufficiently repair, and keep repaired, in a workmanlike manner, and with good materials, at his and their own proper expense and costs, as well all and every the glass and other windows, window-shutters, doors, locks, fastenings, partitions, ceilings, floors, chimney-pieces, shelves, pavements, privies, sinks, drains, cesspools, cisterns, pumps, pipes, wells, water-courses, coppers, as all and singular other the inside of the premises hereby demised, together with all such fixtures, buildings, improvements, and additions whatsoever, as at any time during the said term shall be erected, set up, or made by him the said Edmund Graves, his executors, administrators, or assigns, thereupon. And also, that it shall and may be lawful for

the said John Bull, his heirs, or assigns, or his or their surveyor, properly authorised, either alone or with workmen, or others, twice in every year, during the said term of thirty-one years, at seasonable times in the day-time, to enter into and upon the said two messuages or tenements, and premises, or any part thereof, for the purpose of viewing and examining the state and condition thereof; and of all defects, decays, or wants of reparation, then and there found, to give or leave notice at the said demised premises, to or for the said Edmund Graves, his executors, administrators, or assigns, to repair and amend the same within three calendar months then next; within which said time of three calendar months next after every or any such notice shall be given or left as aforesaid, he the said Edmund Graves, his executors, administrators, or assigns, shall and will well and sufficiently repair, amend, and make good all such defects, decays, and wants of reparation accordingly. And, lastly, he the said Edmund Graves, his executors, administrators, and assigns, shall and will, at the expiration or other sooner determination of the said term of thirty-one years hereby demised, peaceably and quietly leave, surrender, and yield up, unto the said John Bull, his heirs, or assigns, or to whomsoever else he or they shall direct, all and singular the said messuages or tenements, and premises, hereby demised, without any force, compulsion, action, suit, trouble, or refusal whatsoever, in good repair and condition in all respects, together with the said several fixtures and other things belonging to the freehold of the said premises, which shall be thereupon or thereunto belonging, in a good state of repair and condition, (reasonable use and wear thereof only excepted.) Provided always, that if the said yearly rent hereinbefore reserved, or any part thereof, shall be in arrear and unpaid by the space of twenty-one days, next after any of the days or times hereinbefore appointed for the payment thereof as aforesaid; or in case the said Edmund Graves, his executors, administrators, or assigns, shall not well and truly observe, perform, fulfil, and keep the covenants, clauses, and agreements, herein contained, on his and their part, then, and in any or either of the said cases, it shall and may be lawful to and for the said John Bull, his heirs, and assigns, into the said hereby demised premises, or any part thereof, in the name of the whole, to re-enter, re-possess, and enjoy, and the said Edmund Graves, his executors, administrators, and assigns, and all other possessors and occupiers of the said premises, thereout and from thence utterly to expel,

put out, and amove, anything hereinbefore contained to the contrary thereof notwithstanding. And also, that he the said Edmund Graves, his executors, administrators, and assigns, shall and will, at his and their own costs, insure and keep insured during the said term hereby granted, the said messuages and premises hereby demised, from loss or damage by fire, in one of the offices in London or Westminster, in the joint names of the said John Bull, his heirs, or assigns, and of the said Edmund Graves, his executors, administrators, or assigns, for the sum of £2000 at the least; and in case the same or any part thereof shall be burnt down or damaged by fire, shall and will repair, rebuild, and reinstate the same as before such fire happened, within six months then next; and shall and will produce the policy and receipt for such insurance, for the then current year, to the said John Bull, his heirs, or assigns, when requested. And the said John Bull, for himself, his heirs, and assigns, doth hereby covenant, promise, and agree, with and to the said Edmund Graves, his executors, administrators, and assigns, paying the yearly rent hereby reserved, on the days and in the manner hereinbefore mentioned, and observing and performing the several covenants and agreements hereinbefore contained, by him and them to be performed and observed, shall and lawfully may, peaceably and quietly have, hold, use, occupy, possess, and enjoy the said two messuages or tenements, and all and singular other the premises hereby granted and demised, with their appurtenances, for and during the full and complete term and time hereinbefore granted thereof, without any lawful denial, hinderance, molestation, or interruption whatsoever, of or by him the said John Bull, his heirs, or assigns, or any other person or persons, now or hereafter lawfully or equitably claiming, or having right to claim, any estate, right, title, trust, or interest from, under, or by him, them, any or either of them, or by or with his, their, or any of their means, consent, procurement, or privity.

In witness, &c.

It will be observed, that on the back of all leases, the following memorandum, or record of their sealing and delivery, ought to be made.

"Signed, sealed, and delivered, (*being first duly stamped*,) in the presence of

Witnesses' names { John Bell,
Daniel Grove."

Where there is any consideration, or sum of money, advanced for the grant of the lease, there must be an *ad valorem* stamp, that is, a stamp upon such value. This the solicitor will mark for you, and, in these cases, a receipt of this form should be put upon the back of the lease, and signed by the landlord and witnessed.

"Received, the day and year within written, of and from the within-named (John Jones), the sum of £200, being the consideration money within mentioned, to be paid by him to me. (Signed) DAVID PRICE.
Witness, JOHN FOX."

The following lease is special in its nature, and will be found very useful, as an example in similar cases.

A Lease of a Farm, by Husband and Wife, of the Wife's Lands, with the usual Covenants respecting Husbandry, &c.

THIS INDENTURE, made the day of in the year of the reign of our Sovereign Lord by the grace of God, of the United Kingdom of Great Britain and Ireland, King, Defender of the Faith, and so forth, and in the year of our Lord one thousand eight hundred and between Theodore Cook, of Portland-place, in the county of Middlesex, Esquire, and Maria his wife, (which said Maria is the only daughter and heir at law of John King, Esquire, her late father, deceased,) of the one part, and Thomas Morris, of the same place, yeoman, of the other part, witnesseth,

That, for and in consideration of the rents, covenants, and agreements herein and hereby mentioned and reserved, on the part and behalf of the said T. M., his executors, administrators, and assigns, to be observed, paid, done, and performed, they, the said T. C. and M. his wife, have demised, leased, and to farm let, and, by these presents, do demise, lease, and to farm let, unto the said T. M., his executors, administrators, and assigns, all that messuage, tenement, or farm-house, commonly called or known by the name of ———, with all houses, edifices, buildings, barns, stables, orchards, yards, gardens, backsides, closes, lands, meadows, pastures, wood-grounds, ways, passages, commodities, and appurtenances whatsoever, thereunto belonging and appertaining, containing by estimation, —— acres, more or less, situate, lying, and being in the several parishes of ——— and ———, in the said county of ———, and which, now and for some

time last past, have been in the tenure and occupation of the said T. M., except and always reserved out of this present demise unto the said T. C. and M. his wife, and the heirs and assigns of the said M., ALL and all manner of timber, and timber-like trees, bodies of pollards and other trees, young storeyers of oak, ash, aspe, elm, and beech, likely to make timber of pollards, and all wariors now standing, growing, or being, or which, during the term hereby demised, shall be standing, growing, or being, in, upon, or about the above demised premises, or any part thereof, with free liberty of ingress, egress, and regress, to and for the said T. C. and M. his wife, and the heirs and assigns of the said M., with servants, horses, carts, and carriages, to fell, cut down, cart, and carry away the same, at such times as the underwood shall be felled, where such timber shall stand, and not doing any wilful hurt, spoil, or damage, to the corn, grain, or grass, of the said T. M., his executors, administrators, or assigns, then growing upon the premises aforesaid. To have and to hold the said messuage and premises abovementioned, to be hereby demised, with the appurtenances (except as before excepted), unto the said T. M., his executors, administrators, and assigns, from the twenty-ninth day of September next preceding the date of these presents, for and during, and unto the full end and term of —— years from thence next ensuing, and fully to be complete and ended; yielding and paying, therefore, yearly and every year during the said term, unto the said T. C. and M. his wife, and the heirs and assigns of the said M., the yearly rent or sum of —— pounds, of lawful money of Great Britain, at the two most usual feasts or days of payment of rent in the year; (that is to say) the twenty-fifth day of March, and the twenty-ninth day of September, by even and equal portions. And also yielding and paying unto the said T. C. and M. his wife, and the heirs and assigns of the said M., for every acre of the demised premises that are and have been used for meadow, pasture, and hedge-greens; and also all that little pightle in ——, which he the said T. M., his executors, administrators, or assigns, or any of them, shall plough, break up, or convert into tillage, the yearly rent of ——, at or upon the feast-days and times above-mentioned, and so after that rate for every greater or lesser quantity thereof than one acre, over and above the yearly rent hereby before reserved. And the said T. M., for himself, his heirs, executors, administrators, and for every of them, doth covenant, promise, and agree to and with the said T. C. and M.

his wife, and the heirs and assigns of the said M., in manner following; (that is to say) That he the said T. M., his executors, administrators, or assigns, or some or one of them, shall and will well and truly pay, or cause to be paid, unto the said T. C. and M. his wife, and the heirs and assigns of the said M., the yearly rent hereby reserved, at the days and times, and in the proportions above-mentioned and appointed for payment thereof, according to the true intent and meaning of these presents; And that he the said T. M., his executors, administrators, and assigns, and every of them, shall and will, at their own proper costs and charges, during the said term hereby demised, repair, uphold, pale, support, amend, maintain, and keep the messuage, barns, stables and out-houses, edifices and buildings, above demised; And also hedge, ditch, scour, cleanse, and in good repair keep all and singular the hedges, ditches, gates, stiles, fences, and quicksets; and preserve all young storeyers of oak, ash, aspe, beech, and elm, likely to become timber, and preserve the fruit-trees growing in the orchards, and other the demised premises, from the hurt and spoil of cattle, or any other wilful or negligent spoil, *and if any of the said trees die, to plant new ones in the room and instead thereof.* And the said messuage, barns, stables, edifices and buildings so as aforesaid repaired, upheld, paled, raised, supported, amended, maintained and kept, and the hedges, ditches, gates, stiles, storeyers, fruit-trees, and fences so hedged, ditched, fenced, scoured, cleansed, and the quicksets preserved in good repair, shall and will, at the end and expiration or other sooner determination of this present lease, peaceably and quietly leave, surrender, and yield up the same, and all and every of them, unto the said T. C. and M. his wife, and the heirs and assigns of the said M.; And that he the said T. M., his executors, administrators, and assigns, and every of them, shall, during the said term, lay all the corn and hay growing in and upon the said premises into the barns, and spend the same upon the premises; and shall not employ, sell, or carry away, or suffer to be sold or carried off or from the said demised premises, to be elsewhere employed, any straw, stover, soil, or dung whatsoever, which shall arise or be made thereon, nor spend nor waste the straw and stover upon any pretence whatsoever, otherwise than to make dung thereof; and all the mud and dung which they shall make in the highways thereto adjoining, shall lay or leave the same to or upon the said premises, there to be spent and not elsewhere, (except all such hay as shall be growing upon the premises,

in the last year of the term hereby demised, when it shall and may be lawful to and for the said T. M., his executors, administrators, and assigns, if they leave the said premises, to carry off and spend it elsewhere). And further that he the said T. M., his executors, administrators, and assigns, shall not, nor will, at any time during the said term, cross crop, or double crop any part of the said premises, but according to the course of husbandry in the country where the premises do lie, but shall keep the usual and ordinary seasons for tilling thereof; (that is to say) The first year wheat, rye, or barley; the second year Lent corn; and shall not sow any barley in any one year of the said term, unless it be upon a summer's fallow: And shall and will, during the term hereby demised, permit and suffer thirty acres more of the arable land hereby demised to lie in pasture: and that he the said T. M., his executors, administrators, or assigns, shall leave fifty acres of the said demised premises for fallow in the last year of the term hereby demised, which it shall and may be lawful to and for the said T. C. and M. his wife, and the heirs and assigns of the said M., to enter on, at the Lady-day next before the end of the said term hereby demised, to stir, dress, and manure the same, and to take all such dung as shall be left in or about the yards, to lay on such fallow, and to take and have stable-room for horses, and lodging-room for servants, for doing thereof. And that he the said T. M., his executors, administrators, or assigns, shall not, nor will cut, lop, or top, or make any hedges, but when the fields whereto they belong are sowed with winter corn, and that at seasonable times of the year; and shall not, nor will make up any of the hedges, fell or cut the underwood, nor lop nor top the pollards of or belonging to the said premises, or any part thereof, under —— years growth. And the said T. C. for himself, and for the said M. his wife, and her heirs, executors, and administrators, doth by these presents covenant, promise, and agree, to and with the said T. M., his executors, administrators, and assigns, in manner following; (that is to say) that forasmuch as the premises aforesaid are copyhold, and cannot be leased for any longer term than for —— years; and at the end of this demise he the said T. C. and M. his wife, or one of them, (the covenants of the said lease being performed by the lessee, his executors and administrators,) shall and will, at the request costs, and charges of the said T. M., his executors, or administrators, make, grant, seal, and execute the like lease with this present lease, for —— years longer; and,

at the end of —— years, upon the request as aforesaid, the like lease for —— years longer, and so for ——— years to ——— years, for and during the term of ——— years. And the said T. C. for himself, and for the said M. his wife, and her heirs, executors, administrators, and assigns, and for every of them, doth by these presents further covenant, promise, and agree, to and with the said T. M., his executors, administrators, and assigns, that they the said T. C. and M. his wife, and the heirs and assigns of the said M., shall and will, from time to time, and at all times during this present demise, on reasonable request to him, her, or them, made by the said T. M., his executors, administrators, or assigns, or any of them, and at seasonable times in the year, assign, appoint, and allow unto the said T. M., his executors, administrators, or assigns, brick and tile at the nearest kiln to the said messuage, and sufficient rough timber on the premises hereby demised or elsewhere, within two miles of the said messuage, for all manner of reparations of the said premises hereby demised. And that the said T. M., his executors, administrators, and assigns, shall and may have and enjoy the use of the yards and barns belonging to the said premises, stable-room for his horses, and house-room for himself and servants, for the threshing and spending of the last year's crop, growing and arising upon the premises hereby demised, until the —— day of ——— next, after the end of this demise; and that it shall and may be lawful to and for the said T. M., his executors, administrators, and assigns, for and under the several rents hereby reserved, and the covenants which on his and their parts are and ought to be paid, performed, and kept, peaceably and quietly to have, hold, and enjoy the said messuage and premises aforesaid (except as before excepted), during the term hereby demised, without the lawful let, suit, trouble, or interruption of the said T. C. and M. his wife, or the heirs or assigns of the said M. or any of them. Provided always, and on this consideration nevertheless, that if it shall happen the said yearly rent of —— pounds, or any part thereof, shall be behind or unpaid by the space of ——— days next, over or after either of the said feasts, or days of payment aforesaid, in the several years aforesaid, in which the said several sums ought to be paid as aforesaid; or if the said T. M., his executors, administrators, or assigns, or any of them, do and shall assign or make over this present indenture of lease of the premises hereby demised, or any part thereof, for any term or time whatsoever, without the licence and consent of the said T. C. and M. his wife, or the heirs or assigns of

the said M., first had and obtained in writing, under his, her, and their hands and seals for that purpose; that then and from thenceforth it shall and may be lawful to and for the said T. C. and M. his wife, and the heirs and assigns of the said M., into the said demised premises, or any part thereof, in the name of the whole, wholly to re-enter, and the same to have again, retain, repossess, and enjoy, as in his, her, and their first and former estate and estates; and the said T. M., his executors, administrators, and assigns, and all other occupiers thereof from thenceforth, utterly to expel and put out, any thing herein contained to the contrary in anywise notwithstanding. In witness, &c.

We are anxious to present no precedents but those that may be of general utility; but the different forms applicable to different cases call for insertion. The following lease of a farm is peculiarly concise, and was settled by Mr. Preston; and with this we shall conclude this portion of the subject.

Lease, with peculiar Reservations to Landlord, as Leave to Fish and Hunt, &c. and with the usual Covenants.

THIS INDENTURE, made the day of , in the year of and in the year of our Lord one thousand eight hundred and - between the Reverend W. F. P., rector of ——, in the county of Kent, D. D., of the one part, and R. G., of Yalding, in the said county of Kent, farmer, of the other part, witnesseth,

That the said W. F. P., in consideration of the yearly rent hereinafter reserved, and of the covenants, conditions, and agreements, hereinafter contained, on the part and behalf of the said R. G., his executors, administrators, and assigns, to be paid, kept, done, and performed, hath demised, leased, set, and to farm let, and, by these presents, doth demise, lease, set, and to farm let, unto the said R. G., his executors, administrators, and assigns, all that messuage or tenement, farm, and lands, commonly called or known by the name of Laddingford, otherwise Lattenford Farm, situate, lying, and being in the parishes of Yalding and Mereworth, in the said county of Kent, containing together in the whole, by estimation, 179 acres, be the same more or less, formerly in the possession of R. D., and now of the said R. G.; and also all those several pieces or parcels of land, commonly called or known by the names of Milcham Lands, set, lying, and being in the said parish of Yalding, containing together in the

whole, by estimation, 25 acres, be the same more or less, late in the tenure or occupation of the said R. U. (except, and always reserved out of this present demise and lease, unto the said W. F. P., his heirs, and assigns, all and all manner of timber, and timber-like trees, the bodies of all pollard trees, felloes, steddles, and standards, and all other trees whatsoever, now standing, growing, or being, or that shall at any time hereafter, during this demise, stand, grow, renew, increase, or be in or upon the said hereby demised premises, every or any part thereof; and also all mines, quarries and pits of stone, gravel, sand, loam, marl, clay, and chalk, which now are or shall hereafter be upon the said hereby demised premises, or any part thereof, together with free liberty of ingress, egress, and regress, to and for the said W. F. P., his heirs, and assigns, his and their servants and workmen, with or without horses, oxen, teams, carts, and carriages, at all or any time or times during this demise, to enter and come into and upon the said premises, or any part thereof, to see the state of the said demised premises, and the repairs thereof, and to fell, cut down, hew, square, saw, cord, coal, make coal, hearths, coal pits, and saw pits, and to dig, draw, cart, convert, and carry away the same, or any part thereof, at his and their own wills and pleasure, doing no wilful spoil or damage; and also, except free liberty to and for the said W. F. P., his heirs, and assigns, and his and their friends and servants, to course, hawk, hunt, shoot, fish, and fowl, in and upon the said demised lands and premises, or any part thereof, not doing any wilful damage or spoil to the standing corn or mowing grass of the said R. G., his executors, administrators, or assigns.) To have and to hold all and singular the said messuage or tenement, farm, lands, and premises, hereinbefore mentioned, and intended to be hereby demised, with their appurtenances, (except as before excepted,) unto the said R. G., his executors, administrators, and assigns, from the Feast-day of St. Michael the Archangel, now last past, for and during, and unto the full end and term of seven years, from thence next ensuing, and fully to be complete and ended; yielding and paying therefore yearly, and every year during the said term, unto the said W. F. P., his heirs, and assigns, the clear yearly rent or sum of five hundred pounds of lawful money of Great Britain, free and clear of and from all taxes and deductions whatsoever, except as after mentioned, by four equal quarterly payments in each year, that is to say, the 25th day of December, the 25th day of March, 24th day of June, and 29th day of September. And also yielding and paying

yearly, and every year, during the said term, unto the said W. F. P., his heirs, and assigns, over and above the yearly rent before reserved, at and upon the several days of payment aforesaid, by even portions, the sum of £50 of like money, for *every acre* of land that now lies as meadow or pasture hereby demised, which at any time or times, during the said term, shall be, by any ways or means whatsoever, ploughed, digged, broken, set, or sown with any manner of corn, grain, or seed, unless by the leave and consent, in writing, of the said W. F. P., his heirs, or assigns, first obtained, and so after that rate for every greater or less quantity than an acre thereof, which shall be so ploughed, digged, broken up, set, or sown as aforesaid, without such consent as aforesaid. Provided always, that if it shall happen that the said yearly rent or sum of £500, or any part thereof, or the said additional rent or sum of £50 an acre, in respect of ploughing, breaking up, or sowing, in case the same shall become due and payable, or any part thereof, shall be behind and unpaid, after either of the said feast days or days of payment, on which, as aforesaid, the same are hereinbefore respectively reserved, for the space of twenty-one days, next after the same shall become due; or if the said R. G., his executors, or administrators, or any of them, shall or do at any time or times during the said term of seven years, demise, let, set, grant, bargain, sell, assign over, or otherwise pass away the said messuage or tenement, farm, lands, and premises, or any part thereof, or this present lease, or his or their estate or interest therein, or in the premises, or any part thereof, to any person or persons whomsoever, without the consent, licence, and agreement of the said W. F. P., his heirs, or assigns, first had and obtained in writing, under his or their hands; or shall do or commit any breach of or make default in the performance of any of the covenants or agreements hereinafter contained, which on his and their parts and behalfs are or ought to be observed, performed, fulfilled, and kept, that then, and at all times afterwards, in any of the cases aforesaid, it shall and may be lawful to and for the said W. F. P., his heirs, or assigns, or any of them, into the said demised premises, with the appurtenances, to re-enter, and the same to have again, retain, and enjoy, as in his and their first and former estate and estates, anything hereinbefore contained to the contrary thereof, in anywise notwithstanding. And the said R. G., for himself, his executors, administrators, and assigns, and every of them, doth covenant, promise, and agree, to and with the said W. F. P., his heirs, and assigns, by these presents, That the said R. G., his executors, admi-

nistrators, and assigns, or some of them, shall and will yearly, and every year during the said term of seven years, well and truly pay, or cause to be paid, unto the said W. F. P., his heirs, or assigns, or some of them, as well the said yearly rent or sum of £500, hereinbefore reserved, and every part thereof, as the same shall become due and payable, as also the said additional rent or sum of £50 per acre, in respect of ploughing, breaking up, or sowing, in case the same shall become due and payable, on the respective days of payment, at and which the same are hereinbefore respectively reserved or mentioned to be paid as aforesaid, and according to the true intent and meaning of these presents. And also shall and will pay, bear, and discharge, all and any the taxes, tythes, charges, assessments, and impositions, which now are, or which shall or may be taxed, charged, assessed, or imposed, for or in respect of the said demised premises, or any part thereof, by authority of Parliament or otherwise, save and except such as may be hereafter imposed upon the landlord by act of Parliament. And also, that he the said R. G., his executors, administrators, and assigns, or some of them, shall and will, at his and their own costs and charges, the same having been first repaired by the said W. F. P., his heirs, and assigns, agreeable to his covenant hereinafter contained, when and as often as need or occasion shall be or require, well and sufficiently repair, amend, maintain, uphold, and keep repaired, the said messuage or tenement, barns, stables, and buildings, hereby demised, in, by, and with all and all manner of needful and necessary reparation and amendments. And also all and every the hedges, ditches, gates, bars, stiles, posts, pales, rails, fences, and inclosures, of and belonging to the said demised lands and premises, (for the doing whereof the said R. G., his executors, and administrators, are to have rough timber assigned and allowed to him and them, as hereinafter is mentioned.) And the same as well and sufficiently repaired, amended, preserved, and kept together, with the possession of all and singular the said demised premises, at the end or sooner determination of this present lease, shall and will, peaceably and quietly, leave, surrender, and yield up, to the said W. F. P., his heirs, or assigns. And also, that he the said R. G., his executors, administrators, and assigns, shall and will yearly, and every year during the said term, stack, house, unbarn, and lay in the said barns, and other the said demised premises, or some part thereof, all such wheat, rye, barley, oats, peas, beans, tares, Podware corn, grass seeds

and hay, as shall from time to time grow in and upon the said demised lands, or any part thereof, and all the said Podware hay and straw, shall and will fodder out, and spend in and upon the said demised lands and premises, and not elsewhere. And all the dung, muck, greet, sulledge, compost, and manure, which shall arise or be made in or upon the said demised premises, where the same shall be most required, (except the hay, straw, muck, dung, compost, and sulledge, which shall arise and be made therefrom, during the last year of this demise, and which shall be left upon the said premises, for the use and benefit of the said W. F. P., his heirs, or assigns, he the said R. G., his executors, administrators, or assigns, being paid and allowed for the same, as hereinafter mentioned.) And also, that he the said R. G., his executors, administrators, and assigns, shall and will, from time to time, and at all times during the said term of seven years, well and carefully preserve and keep, or do his and their utmost endeavour to preserve and keep, the fruit trees now planted or growing, and which, during this demise, shall be planted or set to grow in the orchards and grounds before demised, from all hurt, bite, destruction, damage, and spoil of cattle, or otherwise. And if it shall happen that any of the said fruit trees now planted or growing, or which hereafter shall be set or planted in the said orchards or grounds, shall at any time or times during the said term, die, starve, perish, or decay; that then he the said R. G., his executors, administrators, and assigns, shall and will, at his and their own proper costs and charges, at the next seasonable time in the year afterwards for good planting, plant and set to grow, in the room and stead of every tree so dying, starving, perishing, or decaying, as aforesaid, one other good young tree, and likely to grow and thrive, of the same or better fruit and kind than the tree so dying, perishing, or decaying, was of, and the same so planted, shall and will also afterwards, during the continuance of this demise, well and carefully preserve and keep from all wilful, voluntary, and negligent hurt, spoil, and destruction, by cattle and otherwise; and also, that he the said R. G., his executors, administrators, and assigns, at the end, expiration, or other sooner determination of this lease, leave, at least, 35 acres of the said demised lands, in good husband-like and orderly manner, planted and stocked with good and well-conditioned hop-plants, or hop-sets of three years growth or planting at the least, and carefully, and in a husband-like manner, preserved and kept; and also, that he the said R.

G. his executors, administrators, and assigns, shall and will, during the six and seven years of this demise, cover one-fourth part of the said land to be so planted with hop plants as aforesaid, with good woollen rags, after the rate of fifteen hundred weight upon each acre. And also that he the said R. G. his executors, administrators, and assigns, shall not nor will sow any hemp or flax, nor plant or set more than three acres of potatoes, in any one year of the said term. And also that he the said R. G. his executors, administrators, and assigns, shall and will yearly, and every year during the continuance of this demise, set, spend, and spread in and upon one-third part of the meadow land hereby demised, twenty cartloads of good rotten dung, or fifty bushels of ashes, upon each acre thereof. And also that he the said R. G. his executors, administrators, and assigns, shall and will, in the sixth year of the said term, make thirty acres of the arable land hereby demised a good summer fallow for wheat, four times ploughed at the least, and manured with two hundred bushels of lime, thirty cartloads of good rotten dung, or forty cartloads of good compost (containing dung and mould), upon each acre of the said fallow. And also shall and will prepare, in the seventh year of the said term, a like quantity of arable land, in the same manner, and with the same quantity of manure for a wheat season. And also shall and will, in the last year of the said term, leave six acres, other part of the said land hereby demised, well manured for and sown with turnips. And also shall and will permit the succeeding tenant, at the end of the said term, to sow any part of the land whereon corn shall be growing with good grass, and other seeds, as he shall see fit. And also that he the said R. G. his executors, administrators, and assigns, shall and will, without being paid for the same, harrow and roll in the same, and carefully preserve the same after the corn is carried off. And also that he the said R. G. his executors, administrators, and assigns, shall and will preserve all the timber trees, tillows, hedge-rows, and living fences, which are now standing, or shall be hereafter planted, from damage by cattle or otherwise; and shall and will plant and supply those parts of the said fences which shall be defective, with good quicksets, and make proper ditches adjoining thereto, so as not to disturb or take away the ground so near to any of the hedges, living fences, trees, or tillows, as might injure the same. And also that he the said R. G. his exe-

cutors, administrators, and assigns, shall not nor will fall any of the underwood, shaws, or hedge-rows, of less than seven years growth, of or belonging to the said demised premises; and shall and will, before any such fall thereof, give or leave one month's notice in writing, to or for the said W. F. P. his heirs, or assigns, of his or their intention to fall or cut down the same, to the end that the said W. F. P. his heirs, or assigns, or his or their agents or stewards, or any of them, may mark out all such tillows, waverers, and spears of oak, ash, elm, or other small stuff, as he, they, or any of them, shall think proper and fit to be left standing and growing in or upon the said woods, shaws, or hedge-rows. And also that he the said R. G. his executors, administrators, and assigns, shall and will, before the 20th day of April, in the same year in which any fall of underwood shall be made, make a good hedge and ditch fence round each space where such fall is made, and shall and will clear all the ware and underwood which shall be fallen before the 20th day of May following; and shall and will, in the month of November, in the same year, plant and fill up, at his expense, the same space of ground, with good ash and willow plants, the said ash and willow plants being paid for by the said W. F. P. his, heirs, or assigns. And also that he the said R. G. his executors, administrators and assigns, shall not nor will grub up or remove any hedge or fence, without the consent of the said W. F. P. his heirs, or assigns, first obtained in writing. And also shall and will permit and suffer the said W. F. P. his heirs, or assigns, or his or their agent or servants, to inspect the said messuage or tenement, lands and hereditaments hereby demised, twice in each year, to see if the same messuage be in good repair, and the said lands cultivated according to good husbandry, and the best system of agriculture then practised in the said parishes of Yalding and Mereworth, or the neighbourhood thereof. And further, that it shall and may be lawful to and for the said W. F. P. his heirs, and assigns, but at his and their own costs and charges, as often as he or they shall think proper, in case any person or persons shall, at any time or times during this demise, hawk, hunt, course, fish, fowl, or otherwise sport, in, over, or upon the said demised premises, or any part thereof, from time to time, to bring any action or actions, suit or suits, or otherwise prosecute and proceed against all and every such person or persons, in the name or names of the said R. G. his executors, administrators, or assigns, and

that he the said R. G. his executors, administrators, and assigns, shall not, nor will at any time release or otherwise discharge such action or actions, suit or suits, or other proceedings, without the consent, in writing, of the said W. F. P. his heirs, or assigns. And further, that he the said R. G. his executors, administrators, and assigns, shall and will, from time to time during the said term, warn off from the said demised premises, by notice in writing under his or their hand or hands, all and every person or persons who shall at any time trespass or come and be upon the said premises, or any part thereof, for the purpose of hawking, hunting, coursing, fishing, fowling, or otherwise sporting thereupon, and immediately thereupon give the said W. F. P. his heirs, and assigns, notice thereof. And the said W. F. P. for himself, his heirs, and assigns, and every of them, doth hereby covenant, promise, and agree, to and with the said R. G. his executors, administrators, and assigns, and every of them, in manner following, that is to say, that he the said W. F. P. his heirs, or assigns, shall and will, within months from the date hereof, lay out in the improvement and repairs of the said messuage, tenement, and buildings, a sum of money not exceeding £ , and shall and will, from time to time, and at all times during the said term, within months next after every request made to him or them, or left to, for, or with him or them, in writing, of the want of rough timber for the necessary repairing, amending, and keeping in repair, the said messuage or tenement, barns, stables, outhouses, and buildings, before demised, or any of them, and the gates, bars, stiles, posts, pales, and rails, of and belonging to the said demised lands and premises, or any of them, allow, provide, and assign, to and for the said R. G. his executors, administrators, and assigns, good, competent, and sufficient rough timber of the trees growing on the said demised lands, for the doing thereof, the same rough timber to be felled, fetched, taken, and carried away, by and at the costs and charges of the said R. G. his executors, administrators, and assigns. And also that he the said W. F. P. his heirs, or assigns, shall and will pay and allow unto the said R. G. his executors, administrators, or assigns, for the hay, straw, haulm, and fodder, at a feeding price, and also for the dung, muck, and sulledge, which shall be made and left on the said demised lands and premises the last year of the said term, so much money as the same shall be valued and adjudged to be worth, by two indif-

ferent persons, one to be chosen by each party, in the usual course in such cases pursued. And also that he the said W. F. P. his heirs, and assigns, shall and will pay and allow unto the said R. G. his executors, administrators, or assigns, so much money for the underwood growing and being on the said demised woodlands, and the hedge-rows, hop poles, *fallows*, manures, mendments, half mendments, and dung mixens, and yards, at the end, expiration, or sooner determination of the said term of seven years, as the same shall be valued and adjudged to be worth, by two indifferent persons, to be chosen as aforesaid. And also that it shall and may be lawful to and for the said R. G. his executors, administrators, and assigns, from and after the end of the said term of seven years, until the 12th day of May next following, to have the reasonable use of the barns, barn-yards, and rick staddles hereby demised, to lay, thresh, clean, and carry away the corn and grain which shall be growing on the said demised lands, in the last year of the said term, and to fodder his and their cattle in the said barn-yards, and water them at the usual watering places there. And also that he the said R. G. his executors, administrators, and assigns, paying the several yearly rents before reserved, and observing, performing, fulfilling, and keeping all and every the covenants, grants, provisoes, payments, and agreements hereinbefore contained, which on his and their parts and behalfs are or ought to be performed, observed, fulfilled, and kept, shall or may, peaceably and quietly, hold, use, occupy, possess, and enjoy the before-demised premises, with the appurtenances, (except as before excepted,) for and during the said term of seven years, without any lawful let, suit, trouble, claim, eviction, denial, molestation, or interruption by the said W. F. P. his heirs, or assigns, or any person or persons lawfully claiming, or to claim by, from, or under him, them, or any of them.

In witness, &c.

COVENANTS, CONDITIONS, AND PROVISOES.

Although, in the forms of leases we have given, there are various covenants, conditions, and provisoes, with reference to the various circumstances under which they were granted; yet, as these must necessarily vary in many

instances, it is requisite to call the attention of both landlords and tenants particularly to the subject, that they may take care that the leases granted or accepted do really contain such covenants as may be necessary to secure their respective interests. We shall, therefore, give precedents of general covenants by themselves, under their several heads; and, by referring to the drafts of leases prepared, the reader will perceive whether they are contained or not, and act as his interest may require, in obtaining their insertion, or striking them out altogether.

The first is a covenant by the lessor to the lessee, in the following terms.

1. *For quiet enjoyment.*

And the said A. B. doth hereby, for himself, his heirs, and assigns, covenant, promise, and agree, to and with the said C. D. his executors, administrators, and assigns, that it shall and may be lawful for the said C. D. his executors, administrators, and assigns, from time to time, and at all times hereafter, peaceably and quietly to enter in and upon, and to have, hold, use, occupy, possess, and enjoy, the said premises hereinbefore described and expressed, and intended to be hereby demised, and every part thereof, to and for his and their own use and benefit absolutely, without any let, suit, trouble, denial, eviction, ejection, interruption, or disturbance whatsoever, of, from, or by the said A. B. or his heirs, or any other person lawfully or equitably claiming, or to claim, by, from, through, or under him or them.

2. *Covenant by Lessee to pay Rent.*

This is common to all leases, and need not be repeated.

3. *Covenant to pay Taxes and Rates.*

And also that he the said C. D. his executors, administrators, and assigns, shall and will pay, satisfy, and discharge, or cause to be paid, satisfied, and discharged, all, and all manner of parliamentary, parochial, and other taxes, rates, duties, assessments, and impositions whatsoever, now, or at any time hereafter during the said term hereby demised, payable for or in respect of the said premises, or any part of them, or the said yearly rent, the land tax only excepted as aforesaid.

4. *Covenant to repair and leave in repair.*

And also that he the said C. D. his executors, administrators, and assigns, shall and will, at their proper costs

and charges, from time to time during the said term, well and sufficiently repair, maintain, uphold, sustain, and keep all the said premises hereinbefore described, and intended to be hereby demised, and every part and parcel thereof, together with all buildings, improvements, and additions whatsoever, which, at any time during the said term, shall be erected, set up, or made thereupon, by him the said C. D. his executors, administrators, or assigns, in, by, and with all manner of needful and necessary reparations and amendments, when and as often as the same shall require; and the said premises, and every part thereof, being well and sufficiently repaired, maintained, upheld, sustained, and kept, at the end of the said term, shall and will, peaceably and quietly, leave and yield up to the said A. B. his heirs and assigns.

A proviso to the effect that the lessee may enter twice, or oftener, in each year, to examine into the state of the premises, and give notice to the lessee to repair in a certain time, is usual, but not necessary; yet it is greatly in favour of the tenant, as the landlord will not have the same claim, if he neglect to examine and give notice.

5. *Covenant to insure against Fire.*

And also that he the said C. D. his executors, administrators, and assigns, shall and will, immediately after the commencement of the said term hereby demised, at his or their expense and charges, insure the said messuage, buildings, and premises hereinbefore described, and intended to be hereby demised, from accidents by fire, in the Insurance Office, in London, (or in some other good and reputable office, to be approved of by the said A. B. his heirs or assigns,) in the joint names of him the said A. B. his heirs or assigns, and the said C. D. his executors, administrators, or assigns, in the full sum of £ at the least, and continue the same, together with all other messuages which may be erected upon the ground or scite thereof, during the said term, in the said sum of £ , or such other sum as for the time being shall be sufficient for rebuilding and reinstating the said messuage, buildings, and premises, in case the same, or any part of them, shall be burnt down, demolished, or damaged by fire: And shall and will from time to time, at the request of the said A. B. his heirs or assigns, produce unto him or them a receipt, acquittance, or other voucher, for the payment of such insurance for the then current year;

and, in default thereof, that the said A. B. his heirs or assigns, shall and may insure the said messuage, building, and premises hereinbefore described, together with all such after-erected buildings as aforesaid, in or for such sum or sums as are hereinbefore mentioned respectively; and shall be repaid the costs and expense thereof by the said C. D. his executors, administrators, or assigns, on the next quarter-day of payment for the rent hereby reserved. And it is hereby further agreed, that the sum which shall at any time be recovered and paid by virtue of any such insurance or insurances, shall forthwith, and with all convenient speed, be laid out and applied in or towards rebuilding, repairing, and reinstating the whole or such part of the said messuage, buildings, and premises, as shall happen to have been destroyed or damaged, as far as the same will extend. And, moreover, that, in case the sum which shall be so insured, upon the said messuage, buildings, and premises as aforesaid, shall be found insufficient for rebuilding, repairing, and reinstating the same in a good and substantial manner, then, and in every such case, the said C. D. his executors, administrators, and assigns, shall and will pay and make up all and every such deficiency and deficiencies out of his own proper monies, and lay out and expend the same in such rebuilding, repairing, and reinstating the same as aforesaid.

6. Covenant to contribute to Party-walls, &c. in London.

And also shall and will, during the said term, as often as occasion shall require, bear, pay, and allow, a reasonable sum towards the making, supporting, and repairing of all party walls, party gutters, and drains, which shall belong to the said demised premises, or any part thereof, with all necessary reparations and amendments.

7. Covenant against exercising particular Trades.

And also that he the said C. D. his executors, administrators, and assigns, shall not, nor will, at any time during the said term hereby granted, use, exercise, or carry on, or permit, or suffer to be used, exercised, or carried on, in or upon the said premises hereinbefore described, and expressed to be hereby demised, or any part thereof, any or either of the trades of a vintner, &c. &c. &c. or any noisome, noisy, or offensive trade or business, without the express consent in writing under the hand of the said A. B. his heirs or assigns; nor shall nor will, without such consent in writing as aforesaid, at any time during

the said term, convert the premises, or any part thereof, into a shop, warehouse, or place of sale, of any kind or description whatever.

AGRICULTURAL COVENANTS.

1. To cultivate a Farm in a husbandlike manner.

This is common to leases of farms, and need not be repeated.

2. To keep and fold Sheep on the Premises.

And also shall and will, from time to time, and at all times during the said term, keep a flock of sheep; and shall and will tether the same in a fair, proper, and husbandlike manner, on such part or parts of the said farm, lands, hereditaments, and premises, as shall stand most in need of manure, except only during the last year of the said term hereby demised, when the same shall be tethered and folded on such part or parts of the same premises as the said A. B. his heirs, or assigns, shall from time to time direct, and, in default of such direction, then on such part or parts of the said farm, lands, or premises, as shall most want or require the same for the next crop.

3. To fold and litter out neat Cattle.

And also shall and will, from time to time, and at all seasonable times during the said term hereby granted, fodder and litter out all the hay, straw, chaff, and clover which shall yearly arise from or upon the said land and premises, during the said term, for the purpose of being converted into dung, with neat beasts and other cattle, on some part or parts of the said demised premises. And shall and will, from time to time, and at all seasonable times, during the continuance of the said term, lay, spread out, and expend in a husbandlike manner, the manure and compost which shall be so made, on such part and parts of the said farm, lands, and premises hereby demised, as shall have most occasion for the same.

3. To repair Fences.

And also shall and will, from time to time, during the term hereby granted, make anew the quick and other hedges, ditches, and fences, of or belonging to the said premises, or such part and parts thereof as shall require to be new made, in a good and husbandlike manner, and

at proper seasons of the year; and ditch, bank up, and fence the same hedges, and every of them, on either side, according to the most approved mode of good husbandry; and so as to protect and preserve all such young trees and woods as shall be growing therein, from being barked, destroyed, or injured by cattle. And also shall and will, at all times, and from time to time during the said term, foster and preserve the young trees, spires, and thrifts, and layers, and quicksets of all kinds, standing, growing, or being in or upon the said farm, lands, and premises, or any parts thereof.

4. *Not to cut or lop Trees, except by permission of Lessor, his heirs, or assigns.*

And also shall not nor will, at any time during the said term hereby granted, hew, fell, cut down, lop, top, stub up, or destroy, or cause or suffer to be hewn, felled, cut down, lopped, stubbed up, or destroyed, without the consent in writing of the said A. B. his heirs, or assigns, any of the timber, timber-like, or other trees, hereinbefore excepted, other than such as shall have been assigned or appointed to him or them by the said A. B. his heirs, or assigns, for the repair of the said premises, or any part thereof; nor cut down any alders, willows, sallows, pollards, hazels, thorns, bushes, springs, quicksets, wood, or underwood, which are now growing or being on the premises, save only and except for necessary repairs and fences, to be allowed and set out by the said A. B. his heirs, or assigns. Provided always that the said C. D. his executors, administrators, and assigns, shall and may, at all times during the said term, have and take the underwood growing upon the said lands and premises; and also lop the pollard trees, and trim the timber trees, which have been heretofore lopped and trimmed, and the plashing of the quick-hedges, as and for estovers, and by way of house-bote, plough-bote, cart-bote, and hedge-bote, so as the same are taken in a husbandlike manner, and at all seasonable times of the year.

5. *Not to plough ancient pastures.*

And also that he the said C. D. shall not nor will at any time during the said demise, plough, break up, or convert into tillage, nor cause, nor suffer to be ploughed, broken up, or converted into tillage, any part of the meadow or pasture land hereby demised, which has not been in tilth for years last past, nor dig, nor break up for

brick, tiles, turfs, flags, or any other purpose, the said arable land, or any other part of the said premises. Provided always, and it is hereby agreed and declared, that for and notwithstanding any thing hereinbefore contained to the contrary, it shall be lawful for the said C. D. his executors, administrators, and assigns, at all times during the said demise, to dig for and take any quantity of clay or marl, out of any part of the said demised premises, as he or they shall judge proper, for the improvement of the lands hereby demised; and also all such quantity of gravel as shall be necessary to keep the roads in and upon the said premises in good repair and condition, but not for sale, nor for the purpose of carrying any part of the same off the demised premises.

6. *Respecting the mode of quitting the said premises.*

Covenants of this nature must be always regulated by a variety of peculiar circumstances. The concluding covenant, at the close of page 72, will shew the general mode.

COVENANTS TO RENEW.

It is always desirable, when possible, to obtain a covenant to renew, when the lease relates to any improveable property, or where money is to be laid out.

1. *To renew a Lease for life, or a Lease determinable on lives.*

And the said A. B. doth hereby, for himself, his heirs, and assigns, further covenant, promise, and agree, to and with the said C. D. his heirs, executors, administrators, and assigns, that in case the said C. D. his heirs, executors, administrators, or assigns, shall, upon the decease of the said, &c. hereinbefore named, as *cestuis qui vie* in the lease hereby granted, except the survivor of them be desirous to surrender this present lease, for the purpose of taking a new lease for a further life or lives in being, and shall, within three calendar months next after such decease, nominate any person or persons in the room or stead of him or them who have so departed this life, nevertheless not exceeding the number of the lives dropped, he the said A. B. his heirs, executors, administrators, or assigns, and on payment of the sum of £ of such lawful money as aforesaid, by way of fine for such renewal, to make, execute, and deliver to the said C. D. his heirs, executors, administrators, or assigns, a new and fresh lease of all and singular the premises hereinbefore described, for and during the joint

lives of the survivor of the said, &c. so named as the *cestuis qui vie*, as aforesaid, and the lives of such person or persons as the said C. D. his heirs, executors, administrators, and assigns, shall have nominated as aforesaid, under the like covenants, provisoes, and agreements, as are herein contained, *excepting only this present covenant of renewal.*

2. Covenant for a Renewal of a Term of Years.

And the said A. B. doth hereby, for himself, his heirs and assigns, covenant, promise, and agree, to and with the said C. D. his executors, administrators, or assigns, that, in case the said C. D. his executors, administrators, or assigns, shall be desirous of taking a new lease of the said premises, after the expiration of the said term, and shall, within six calendar months before the expiration thereof, signify such his or their desire in writing, under his or their hands, he, the said A. B. his heirs or assigns, shall and will, at or before the expiration of the said term, at the costs and charges of the said C. D. his executors, administrators, or assigns, and on payment of the sum of £ , of such lawful money as aforesaid, by way of fine for such renewal, make, execute, and deliver, or cause to be made, executed, and delivered, a new and fresh lease of all and singular the premises hereinbefore demised, for a similar term of years, to commence from and after the expiration of the present term hereby granted, at and under the like covenants, provisoes, and agreements as are herein contained, *excepting only this present covenant or agreement for renewal.**

PROVISOES OR CONDITIONS OF RE-ENTRY.

1. For non-payment of Rent.

Provided always, and these presents are on the condition, that if the said yearly rent or sum of £ , of such lawful money as aforesaid, hereinbefore reserved, or any part thereof, shall be in arrear and unpaid for the space of days next after any of the said days appointed for the payment thereof:—or

* These words, at the conclusion of this and the last covenant, will, of course, be omitted, if a further renewal is contemplated by the parties.

2. On Assigning, &c. without Licence.

If the said C. D. his executors or administrators, shall, without the consent in writing of the said A. B. his heirs or assigns, assign, set over, underlet, or otherwise part with the said premises, or any part thereof:—or

3. On neglect to insure against Fire.

If the said C. D. his executors, administrators, or assigns, or any of them, shall neglect or omit to make such insurance as aforesaid:—or

4. On Bankruptcy, Insolvency, &c.

If the said C. D. shall commit any act of bankruptcy under any of the statutes now in force relative to bankrupts, so as that a commission shall be awarded and issued thereupon, or shall take the benefit of the acts now in force relative to insolvent debtors, or shall make any compromise with his creditors for less than twenty shillings in the pound, or shall suffer the said lease to be taken in execution by the sheriff, under any writ of execution issuing out of any court of record in Great Britain, Ireland, or Wales:—or

5. On commission of Waste.

If the said C. D. his executors, administrators, or assigns, shall commit, or permit and suffer any spoil, destruction, decay, or waste, in or about the said demised premises, or any part thereof, to the value or amount of £ , of such lawful money as aforesaid, in any one year, and shall not effectually amend, repair, or make satisfaction for the same, within one calendar month next after notice thereof in writing, given to him or them for that purpose, under the hand of the said A. B. his heirs or assigns:—or

6. On breach of any Covenant.

If the said C. D. his executors, administrators, or assigns, shall neglect or fail to perform, or be guilty of any breach, non-performance, or non-observance of any of the covenants, clauses, provisoes, and agreements, by him or them to be observed, kept, and performed, according to the true intent and meaning of the same respectfully:—

THEN and in every such case, or in any of such cases, it shall be lawful for the said A. B. his heirs and assigns, in and upon the said premises hereby demised, and every part thereof, to enter, and to hold the same free and dis-

charged of and from the said term or lease hereby demised, and of and from all and every the covenants, obligations, provisoes, and agreements, hereinbefore contained.*

ASSIGNMENTS.

Having thus pointed out the forms in which leases are originally created, with their contingent variations, we must next consider the mode of assigning them to third parties. The most common way is

1. *The assignment of Leases and Premises by indorsement.*

Know all men by these presents, that I, the within-named A. B. for the consideration hereinafter mentioned, have agreed to assign over unto N. O. (now or late servant to Elizabeth Long, of Saville-row, in the county of Middlesex, widow) his executors, administrators, and assigns, the within-mentioned messuage or tenement and premises. Now these presents witness, That, in pursuance of the said agreement, and for and in consideration of the sum of five pounds of lawful money of the United Kingdom of Great Britain and Ireland current in Great Britain, to the said A. B. in hand paid by the said N. O. at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, he the said A. B. hath granted, bargained, sold, assigned, transferred, and set over, and by these presents doth grant, bargain, sell, assign, transfer, and set over, unto the said N. O. his executors, administrators, and assigns, all that messuage, tenement, and all and singular other the premises in and by the within-written indenture of lease demised, or mentioned or intended so to be, with their and every of their appurtenances; and all the estate, right, title, interest, term of years to come and unexpired, property, claim, and demand whatsoever, of the within-named A. B. of, in, to, or out of the same premises, every or any part thereof, together with the said indenture of lease; to have and to hold the said piece or parcel of ground, and all and singular other the premises hereby or mentioned to be hereby assigned, with their and every of their appurtenances, unto the said N. O. his executors, administrators, and assigns, from the feast-day of St. Michael the Archangel now next ensuing

* The form of proviso for determining a lease at six months' notice will be found in page 56.

the day of the date hereof, for and during all the rest, residue, and remainder, which shall be then to come and unexpired of the term of twenty-one years in and by the within-written indenture of lease granted thereof, (determinable, nevertheless, at the option of the said N. O. his executors, administrators, and assigns, at the end of the first seven or fourteen years of the term of twenty-one years within granted, upon the said N. O. his executors, administrators, or assigns, giving such notice to the said A. B. his executors, administrators, and assigns, as the said A. B. is required to give in and by the within-written indenture), subject, nevertheless, to the payment of the rent, and performance of the covenants, in the same indenture of lease reserved and contained on the tenant's or lessee's part, from henceforth to be paid, done, and performed. [*Here may be added covenants for quiet enjoyment, for further assurance, and for indemnity.*]

In witness whereof the said parties have hereunto set their hands and seals, this fifth day of January, one thousand eight hundred and

Witness, W. C. A. B. (Seal.)
J. W. N. O. (Seal.)

[*Note.*—This will require a deed stamp, besides the stamp on the original lease.]

2. *Assignment of a Policy of Insurance.*

This Indenture, &c.

And whereas the said messuages or tenements, and other the buildings hereby assigned, are or have been insured against damage by fire, for the term of years from the day of now last past, in and by a certain deed or policy of insurance hereinafter more particularly described, dated the day of , at the Insurance Office, in London; and it has been agreed by and between the said parties, that the said policy of insurance, and all benefit therefrom, should be assigned to the said C. D.

Now this indenture further witnesseth, That, for the considerations aforesaid, the said A. B. hath granted, bargained, and sold, and by these presents doth grant, bargain, and sell, all that deed or policy bearing date *(as before)*, numbered , and being or purporting to be under the hands and seals of three of the directors of the Insurance Office or Company, by which said policy of insurance the said messuages or tenements, and other the buildings hereby assigned, are or have been insured against

damage by fire, for the term of years from the time aforesaid, to have, receive, and take the said policy of insurance, and all and every the sum and sums of money which shall or may become due and payable thereupon or by virtue thereof, and all other benefit and advantage whatsoever, which shall or may accrue from or in respect of the same, unto the said C. D. his executors, administrators, and assigns, to and for his and their own proper use and benefit, free and clear of and from all and all manner of charges, liens, and incumbrances whatsoever. And the said A. B. doth hereby nominate, constitute, and appoint the said C. D. his executors, administrators, and assigns, his true and lawful attorney and attorneys, to demand, recover, and receive all such sum and sums of money as aforesaid, in as full and ample a manner as he the said vendor could or might have done, if these presents had not been made.

In witness, &c.

3. *Bargain and sale for a year*

This Indenture, &c.

Witnesseth that the said A. B. in consideration of 5*s*. of lawful money of Great Britain, to him in hand paid by the said C. D., at or before the sealing and delivery of these presents, (the receipt whereof is hereby acknowledged) hath bargained and sold, and by these presents doth bargain and sell unto the said C. D. his executors, administrators, and assigns, all those, &c., and all houses, &c., and all the estate, right, and interest in the same, which the said A. B. now hath, by virtue of an indenture of feoffment bearing date, &c. and of livery made in pursuance thereof, to have and to hold the said messuages, lands, hereditaments, and premises, with their appurtenances, unto the said C. D. his executors, administrators, and assigns, from the day next before the day of the date of these presents, for and during, and unto the full end and term of one whole year thence next ensuing, and fully to be complete and ended; yielding and paying therefore the rent of one pepper-corn at the expiration of the said term, if the same shall be lawfully demanded, to the intent and purpose that by virtue of these presents, and by force of the statute for transferring uses into possession, the said C. D. may be in the actual possession of the same premises, and may thereby be enabled to accept and take a grant and release of the freehold and reversion of the same premises, and of every part and parcel thereof,

to the said C. D. his heirs, and assigns, by another indenture already prepared, and intended to be dated the day next after the date hereof.

In witness, &c.

4. *The Release.*

This Indenture, &c. between A. B. of, &c. of the one part, and C. D. of, &c. of the other part.

Whereas by indenture bearing date, &c. and made or expressed to be made between X. Y., of, &c. of the one part, and the said A. B. of the other part, and by livery of seisin made in pursuance thereof, all, &c. [*describe the premises as in the original lease, leaving out the general words,*] with their appurtenances, were demised to the said A. B. his heirs, and assigns, for and during the natural lives of, &c. therein named, who are all now living.

And whereas the said A. B. hath contracted to sell all his estate and interest in the said premises to the said C. D. at and for the price or sum of £

Now this indenture witnesseth, that in pursuance of the said contract, and in consideration of the sum of £ of lawful money of Great Britain and Ireland, current in England, in hand paid to the said A. B. by the said C. D. at or before the sealing and delivery of these presents, the payment and receipt of which said sum of £ , he the said A. B. doth hereby acknowledge, and of and from the same and from every part thereof doth acquit, release, and discharge the said C. D. his heirs, executors, administrators, and assigns, for ever, by these presents he the said A. B. hath granted, bargained, sold, aliened, released, and confirmed, and by these presents doth grant, bargain, sell, alien, release, and confirm, unto the said C. D. (in his actual possession, now being by virtue of a bargain and sale to him thereof made by the said C. D. in consideration of 5*s*. in and by an indenture bearing date the day next before the day of the date of these presents, for the term of one whole year, commencing from the day next before the day of the date of the same indenture of bargain and sale, and by force of the statute for transferring uses into possession,) and to his heirs, all those, &c. together with all houses, &c., and all the estate, right, title, interest, use, trust, property, claim, and demand whatsoever, of him the said A. B. of, in, to, or out of the said messuages or tenements, lands, hereditaments, and premises, hereby granted and released, or intended so to be, and every of them, and every part and parcel thereof,

together with the said recited indenture of lease, and such other deeds, evidences, and writings, as relate to or concern the premises expressed to be hereby assigned, now in the custody or power of the said A. B., or which he can procure without suit at law or in equity, to have and to hold the said lands, tenements, hereditaments, and premises hereinbefore expressed, to be hereby released and assigned with their and every of their appurtenances, unto and to the use of the said C. D. his heirs, and assigns, for and during the lives of the said, &c. subject nevertheless to the payment of the rent and performance of the covenants, conditions, and agreements, in and by the said recited indenture, of the day of reserved and contained, and on the part of the said C. D. his heirs, and assigns, to be paid, kept, observed, and performed. [*Add covenants for title, further assurance and quiet enjoyment, and other usual covenants.*]

[Note. *If the vendor be seised of the freehold estate in right of his wife, and it is intended to pass her interest absolutely, there should be a covenant to levy a fine* sur concessit, *and the recitals and covenants for title should be shaped accordingly.*]

Form of Covenant to levy a fine Sur Concessit.

And for the more effectually and satisfactorily conveying and assuring the said hereditaments and premises hereinbefore expressed, to be hereby released and assigned to the said C. D. his heirs, and assigns, during the lives of the said, &c. as aforesaid, free from all charges and incumbrances, and particularly from all right and title, of or in the said the wife of the said A. B., he the said A. B. doth hereby for himself, his executors, and administrators, and also for the said his wife, covenant, promise, and agree, to and with the said C. D. his heirs, and assigns, that they the said A. B. and his wife, or her heirs, shall and will, at the proper expense and charges of the said A. B. his executors, or administrators, well and duly acknowledge and levy, or cause to be acknowledged and levied unto the said C. D. his heirs, and assigns, before the justices of his Majesty's Court of Common Pleas at Westminster (*or* "at the next great session," *or* "general sessions," to be holden in and for the said county, "*if in Wales or counties palatine,*") one or more fine or fines *sur concesserunt*, of all and singular the messuages, lands, tenements, and hereditaments hereinbefore expressed, to be hereby assigned and released,

or intended so to be. And it is hereby agreed and declared by and between the several parties to these presents, and they do hereby direct that the said fine or fines shall be and enure to the use of the said C. D. his heirs and assigns, for and during the lives of the said, &c. hereinbefore named, and the life of the survivor of them, according to the true intent and meaning of these presents, freed and discharged of and from all right and title of the said the wife of the said A. B. or her heirs, in or to the same hereditaments and premises, or any part thereof

5. *Assignment of a Lease for twenty-one years, after a Sale by Auction.*

This Indenture, &c.

Whereas by an indenture of lease bearing date, &c. and made between, &c. All those, &c. *(describe the parcels as in the original lease, omitting the general words)* with their appurtenances, were demised to the said A. B. for the term of twenty-one years.

And whereas all the estate, right and interest of the said A. B. in the said messuages, hereditaments, and premises, in, by, and under the said recited indenture of lease, were put up to sale by public auction, at, &c. on the day of now last past, when the said C. D. was declared to be the highest bidder or purchaser thereof, being the lot No. in the printed particulars of sale thereof, at the sum of £ ; and thereupon paid into the hands of the auctioneer at such sale the sum of £ by way of deposit, and in part of the said purchase money, conformably to the conditions of sale contained in the said printed particulars there exhibited.

Now this indenture witnesseth, that in pursuance of the said contract by public auction, and in consideration of the said sum of £ paid by way of deposit, and in part of the said purchase money or sum of £ . And also in consideration of the sum of £ in hand paid to the said A. B. by the said C. D. at or before the sealing and delivery of these presents, the receipt whereof the said A. B. doth hereby acknowledge, which said two sums of £ and £ amount in the whole to the said purchase money, or sum of £ of and from which, and every part of which, he the said A. B. doth acquit, &c. He the said A. B. hath granted, bargained, sold, assigned, transferred, and set over, and by these presents doth, &c. unto the said C. D. his executors, administrators, and assigns, all the said messuages, lands, hereditaments, and premises, comprised in the said indenture of lease, with their appurte-

nances, And all the estate, &c. And the said indenture of lease of the said day of . And all other deeds, &c. To have and to hold the said hereditaments and premises hereinbefore described and expressed to be hereby assigned, with all and singular their appurtenances, for and during all the rest and residue now to come and unexpired of the said term of twenty-one years, so created by the said indenture of lease as aforesaid, nevertheless under and subject, &c.

In witness, &c.

The *usual covenants* are

1. *A Covenant for title.*

And the said A. B. doth hereby for himself, his heirs, executors, administrators, and assigns, covenant, promise, and agree to and with the said C. D. his heirs, executors, administrators, and assigns, (*or* "his executors, administrators, and assigns") in manner following, (that is to say) that for and notwithstanding any act, deed, matter, or thing whatsoever, at any time heretofore made, done, committed, executed, or knowingly omitted or suffered by him to the contrary, the said hereinbefore recited indenture of the day of ("with the livery consequent thereon," *if a feoffment)* is a good and valid demise and lease in all respects, both at law and in equity, and is not in any manner forfeited, surrendered, or otherwise become void or voidable. And also that for and notwithstanding any such act, deed, matter, or thing as aforesaid, he the said A. B. hath in himself and in his own right full power, and lawful and absolute authority to grant, bargain, sell, alien, (release) and assign, all and singular the said hereditaments and premises hereinbefore expressed to be hereby assigned and conveyed, according to the true intent and meaning of these presents.

2. *Covenant for quiet enjoyment.*

And further that it shall and may be lawful to and for the said C. D. his heirs (*or*, his executors, administrators) and assigns, from time to time, and at all times hereafter during the continuance of the said demise or lease, hereby assigned and conveyed, peaceably and quietly to enter into, and to have, hold, use, occupy, possess, and enjoy, the said messuages, tenements, hereditaments, and premises, hereinbefore described, and to receive and take the rents and profits thereof, and of every part thereof, to and

for his and their own use and benefit, without any lawful let, suit, trouble, denial, eviction, or interruption, of, from, or by the said A. B., or of, from, or by any other person or persons lawfully claiming, or to claim from, by, under, or in trust for them or any of them; and that free and clear, and freely and clearly acquitted, exonerated, and discharged, or otherwise by the said A. B. his heirs, executors, or administrators, well and sufficiently saved, defended, kept harmless, and indemnified, of, from, and against all and singular former and other gifts, grants, bargains, leases, mortgages, estates, titles, troubles, charges, and incumbrances whatsoever, had, made, done, committed, or suffered by the said A. B. or by any other person or persons lawfully claiming, or to claim by, from, through, or under him.

3. *Covenant for further assurance.*

And moreover that he the said A. B. his heirs, executors, and administrators, (*or* "his executors and administrators," *in case of chattel leases*) and every other person having or lawfully or equitably claiming, or who shall or may have or lawfully or equitably claim any estate, right, title, trust, or interest, in, to, or out of the said messuages, lands, tenements, hereditaments, and premises hereinbefore expressed, to be hereby assigned and conveyed, or intended so to be, or any part thereof, from, by, under, or in trust for him, them, or any of them, shall and will from time to time, and at all times hereafter during the continuance of the said lease, (*or* "term") hereby assigned and conveyed on every reasonable request, and at the proper costs and charges in the law of the said C. D. his heirs, (*or* "his executors, administrators") and assigns, make, do, and execute, or cause or procure to be made, done, and executed, all such further and other lawful and reasonable acts, deeds, and things, assignments, conveyances, and assurances in the law whatsoever, for the better, more perfectly, and absolutely assigning and assuring the said messuages, lands, tenements, hereditaments, and premises, unto the said C. D. his heirs, (*or* "his executors, administrators") and assigns, during the lives of the said, &c. and the life of the survivor of them, (*or* "during all the rest and residue of the said term of years therein") as the said C. D. his heirs, (*or* "his executors, administrators") and assigns, or his or their counsel in the law, shall reasonably advise, devise, or require, so that the person or persons who shall be re-

quired to make, do, and execute such further assurance or assurances, be not compelled nor compellable, for the making or doing thereof, to go or travel from his or their respective dwelling or dwellings, or usual place or places of abode.

4. Covenant by the assignor that the rent and taxes have been paid, and all the covenants and agreements on the part of the tenant have been performed up to a certain time.

And further that the rent in and by the said recited indenture of lease reserved, and the covenants, conditions, and agreements therein contained, and on the lessee's part to be paid, kept, observed, and performed, and all taxes, rates, and assessments, due and payable by the occupier of the said premises, are and have been well and truly paid, kept, done, performed, and fulfilled up to the day of last.

5. Covenant by the assignee to pay the rent, and perform the covenants in the lease.

And the said C. D. doth hereby for himself, his heirs, executors, and administrators, covenant, promise, and agree, to and with the said A. B. his heirs, executors, and administrators, in manner following (that is to say,) that he the said C. D. his executors, administrators, and assigns, during the continuance of the said demise, shall and will pay the said rent in and by the said indenture of lease reserved and contained, and perform and keep all and singular the covenants, conditions, and agreements therein contained, and which from the said day of last, by and on the part of the tenant or assignee of the said premises, are or ought to be paid, performed, and kept, according to the purport and true intent and meaning of the said recited indenture of lease

6. Covenant of indemnity.

And shall and will from time to time, and at all times during the continuance, save, defend, keep harmless, and indemnified, the said A. B. his heirs, executors, and administrators, and his and their lands and tenements, goods, and chattels, of and from the same rents, covenants, and agreements, and every breach, default, or neglect, of or in payment or performance thereof respectively. And of, from, and against all actions, suits, costs, damages, and expenses whatsoever, which he, or they, or any of them, shall or may pay, bear, or sustain, or which shall or may

arise, or be occasioned by reason of the non-payment of the said rent, or the non-performance or non-observance of the said covenants or agreements.

7. Assignment with bargain and sale of fixtures.

This Indenture, &c.

And whereas it hath been agreed by and between the said parties, that the said C. D. should purchase all the fixtures, furniture, and utensils belonging to, or being in or upon the said premises, as specified in the inventory or schedule hereunto annexed, at or for the price or sum of £

Now this indenture further witnesseth, that in consideration of the sum of £ of like lawful money as aforesaid, to the said A. B. in hand paid by the said C. D. at or before the sealing and delivery of these presents, the receipt whereof the said A. B. doth hereby acknowledge, and of and from the same, &c. he the said A. B. hath granted, bargained, and sold, and by these presents doth, &c. unto the said C. D. all and singular the several ranges, grates, cupboards, cisterns, coppers, dressers, shelves, pier-glasses, mirrors, chimney-pieces, and all other the goods, chattels, furniture, effects, matters, and things, which are mentioned and set forth in the schedule or inventory hereunder written or hereunto annexed. To have and to hold the same unto the said C. D. as and for his own proper goods, chattels, and effects, absolutely and free from all liens, debts, and charges of him the said A. B. or any person or persons claiming by, from, through, or under him.

In witness, &c.

The memorandum of the delivery of the possession of the fixtures should be indorsed on the indenture.

Add the schedule or inventory to which the indenture refers The schedule need not be signed by the parties. By stat. 55. Geo. 3. c. 184. sched. part i., if the inventory be separate and distinct from the lease, and is not indorsed, or annexed, it is subject to a stamp duty of £1 : 5*s*. and a further progressive duty of £1 : 5*s*. after 2160 words, for every entire quantity of 1080 words over and above the first 1080 words.

GENERAL REMARKS ON COVENANTS.

Where a lessee covenants to repair generally, he will be liable to rebuild, although the premises should be destroyed either by fire or tempest:—and a lessee is also liable to pay rent to the landlord, though the premises have been destroyed by fire. Therefore, where a lessee is bound by his covenant to repair, and is consequently liable to rebuild in case of fire, the most prudent course is to insure, and for a sufficient sum to cover the expense.

A covenant *not to assign* will not be broken by underletting the premises, or granting an under-lease for part of the term; and if the term made over be but one day less than the whole term, it will not amount to an assignment.

But where a lease was granted with a proviso, that "if the lessee, his executors, administrators, and assigns, should assign, or otherwise part with this indenture of lease, or the premises hereby demised, or any part thereof," it was held that this proviso included an underlease, and that the executing an under-lease would be a breach of covenant. 1 Camp. 20.

And also in a proviso that re-entry might be made "in case the tenant should demise, lease, grant, let, or convey the premises, or any part or parcel thereof," and the tenant executed a deed of partnership with another person, in which he made over the use of a back chamber, and some other part of the premises, exclusively for the use of such partner, and the other parts jointly for their use, it was held a breach of covenant, whether such possession was given gratuitously or not. 1 Maule and Selwyn, 297.

But taking a lodger or lodgers is no breach of covenant not to underlet. 4 Camp. 77.

An assignment that takes place by force of law, as where a lease is taken in execution under a warrant of attorney to confess judgment, and sold, is no breach of covenant not to assign, but the transaction must be clearly without fraud; for if done to enable a single creditor to take the lease in execution, the landlord may recover by an action of ejectment.

An assignment under a commission of bankruptcy is no breach of a covenant not to assign; but it is now sometimes the practice to insert a covenant in leases, that in case the lessee becomes bankrupt, the lessor may re-enter;

and as this clause materially diminishes the value of a lease to the lessee, particularly where any consideration has been given, tenants will do well to take care this clause does not creep in without their knowledge and consent.

Where a lease is made to a single woman, with a covenant not to assign, it will be no breach if she marry. But if a lease be granted to husband and wife, with a covenant that if it should come to any one else than themselves or their issue, the lessor shall re-enter; if the husband die, and the wife remains, the lease is forfeited, and the lessor may re-enter.

Where a lease is granted to two or more, with a covenant that none shall assign without licence from the lessor, and he license any one, this will discharge the covenant as to all.

For the law affecting *Insurances* and *Taxes*, see the respective heads.

LANDLORD'S REMEDIES.

Distress for Rent.

Of the various remedies which the law affords to the landlord for the recovery of rent from his tenant, that by DISTRESS is the most summary and best. It is recommended by Lord Coke as the most plain and certain; and the 2 Will. 3. st. 1. c. 5. recognises it as "the most ordinary and ready way for recovery of arrears of rent."

Blackstone defines a distress to be the "taking of a personal chattel out of the possession of the wrong-doer into the custody of the party injured, to procure a satisfaction for the wrong committed."

In treating on the subject of distresses, we shall consider it in the following order:—

1. Of the several sorts of distresses.
2. Who in respect of his estate or interest may distrain.
3. What things are distrainable.
4 Of the time, place, and manner, of making the distress.
5. How the distress is to be used and disposed of.

Of the several sorts of Distresses.

A distress at common law was used, viz.:—

1. *For the service due to the lord arising from the tenure;* as homage, fealty, rent, suit of court, &c.

These are variously denominated *rent-service*, *rent-charge*, *rent-seck*, *rents of assize*, *chief rents*, and *copy-hold rents*.

These rents, however, differed at common law with respect to the remedy by distress, but by the 4 Geo. II. c. 28, s. 5, the remedy by distress is equally applicable to every species of rent. This statute enacts, "that there shall be the like remedy by distress in cases of rent *seck*, rents of *assize*, and *chief* rents, which had been duly paid for the space of *three* years, within twenty years before the first day of the session in which the act was passed (23d January, 1731,) or which should be thereafter created, as in the case of rent reserved upon lease."

For the recovery of *heriot service*, the lord has his election either to seize or distrain; but if it be a heriot reserved upon a lease, or by deed, since the statute 18 Edw. I., payable by tenant in fee, it is considered as a rent, and can only be recovered, like rent, by distress, or action of debt or covenant. 2 Saund. 168, a.

As the property of it vests immediately in the lord on the death of the tenant, or on alienation by him, the lord may seize it in any place, though he cannot distrain for it out of the manor or land demised If within the manor, he may not only distrain for it the goods of the tenant, but even those of a stranger. 1 Salk. 356.

If a sum of money be reserved in lieu of heriot service, then it becomes a rent, and may be distrained for accordingly. 2 Saund. 165.

Distress for heriot service resembles that for rent, and must be confined to that which is due upon a single reservation; therefore, if a tenant hold two parcels of land, upon which heriots are severally reserved, although both reservations be contained in one deed, a joint distress for both the heriots could not be supported. 1 Bulst. 101.

2. The second sort of distress is for *fines and amerciaments in court-leets*. But for amerciaments in a court-baron, the lord cannot distrain, but is put to his action of debt for recovery thereof.

3. A third case where a distress lies is, for *toll in a fair or market*.

Where a lord hath a fair or market by prescription, and hath used to take toll of cattle sold, if such toll be not paid, the lord may seize any of the cattle so sold, and retain them till satisfaction be made for the toll. But *this* distress is only a pledge to be *detained* till satisfac-

tion made, and is not within the statute to be sold. Rol. Abr. 666.

4. If a *township be amerced*, and they, by consent, assess a certain sum on every inhabitant for the raising thereof, and likewise agree that if it be not paid by such a day, that certain persons appointed for that purpose by the township shall distrain for the sum assessed on each inhabitant: this is a lawful distress, because consented and submitted to by the agreement of those persons who are to pay the tax. Dr. & Stud. c. 9.

5. A *penalty* inflicted for a *breach of a by-law, in a corporation*, may be levied by distress; but this only in case where such remedy is *appointed* for recovery thereof by the power that made the by-law, and at the time the by-law was made; because the by-law only binds the members of that community who make the law, and therefore the assent of every member is presumed in the institution of that law, and consequently the penalty may be recovered by distress, where the parties themselves have agreed to that remedy. But, unless the distress be *expressly* provided for by the corporation, the penalty can be recovered only by action of debt. 1 Ld. Raym. 92.

But where the corporation can prescribe in the distress, they may lawfully distrain for the penalty; because the prescriptive right is grounded on a by-law originally appointing that remedy for recovery of the penalty, and therefore is good; though the by-law on which it is grounded be by length of time worn out or lost.

6. A man may distrain *beasts damage feasant*. And this remedy is not confined simply to the owner of the soil on which the cattle may be found, but extends to those who may be injured by their being thereon, as commoners and others entitled to the produce of the land. 1 Rol. Abr. 405.

But a commoner cannot resort to a distress where the owner of the cattle has any colour of right to put them on the land; but where cattle are put upon the common without any colour of right, the commoner may distrain them. 4 Burr. 2432.

And where a commoner agrees not to exercise his right of common for a certain time, he thereby, during such time, renders himself a stranger to the land, and his cattle may be distrained accordingly. 2 H. Bl. 4.

Where the lord may put cattle upon the common, a commoner cannot distrain his cattle, though he surcharges,

unless at times in which by the custom the common ought to lie fresh. 4 Burr. 2430.

If a man come to distrain beasts damage feasant, and see them on his ground, and the owner chase them out before the distress be taken, though it be for the purpose of preventing the distress, yet the owner of the soil canno distrain them; and if he do, the owner may rescue then. for the beasts must be damage feasant at the time of the distress, and they cannot be taken on fresh pursuit. Co. Lit.

The beasts must be damage feasant at the time of the distress; and if they were damage feasant yesterday, and again to-day, they can only be distrained for the damage they are doing when they are distrained. Bull, N. P. 61.

And if many cattle are doing damage, a man cannot take one of them as a distress for the whole damage; but he may distrain one of them for its own damage, and bring an action of trespass for the damage done by the rest. 12 Mod. 660.

If a distress damage feasant be made in respect of common of pasture, to which two tenants in common are entitled, the distress should be joint; for it is made in respect of their joint possession, and of their several estates. 2 H. Bl. 386.

If a man has a right of common upon the lord's waste for cattle *levant et couchant* on his land, and he surcharge the common, the lord for that cause cannot distrain. 3 Wils. 126.

The landlord having a right to take possession of the premises at the expiration of the term without bringing an ejectment, the tenant holding over cannot distrain his cattle damage feasant put upon the premises by way of taking possession. 7 T. R. 431.

If two persons have distinct rights in the same clos and the cattle of the one in the fair exercise of his right injure that of the other, his remedy (if any) is by action, and not by distress. 1 Taunt. 529.

Cattle may be distrained damage feasant, not only for the injury which they may do to the pasture or herbage of the land, but for damage of any other kind. 2 Saund. 328. n. 4.

Besides these distresses given by the common law, a distress may be made for the *land tax*, *assessed taxes*, *poor's rate*, *church rate*, *tithes*, *highway rate*, *sewer rate*, or any *other rate* imposed by Act of Parliament.

Who, in respect of his Estate or Interest, may distrain.

If a person seised in fee grant out a lesser estate, saving the reversion to himself, with a reservation of rent, or other services, the law gives him, without any express provision, remedy for such rent or service by distress. 2 Bac. Abr. 196.

A person who has not the reversion cannot distrain of common right, but he may reserve to himself a power of distraining, or the reservation may be good to bind the lessee by way of contract, for the performance whereof the lessor shall have an action of debt. Ibid.

If a man devise a rent out of his land, and charge the land with a distress, the devisee may make use of that remedy, and distrain for the rent; but unless the power is given him by the will, he may not distrain for it. Shep. Touch.

For a rent granted for equality of partition by one coparcener to another, or for a rent granted to a widow out of lands whereof she is dowable in lieu of dower, or for a rent granted in lieu of lands upon an exchange, the grantee may distrain without any provision of the parties. Co. Lit.

If a parole lease be made *de anno in annum quamdiu ambobus placuerit*, (from year to year during pleasure), and the lessee occupy during ten years, this, by computation from time past, makes an entire lease for so many years; and if rent be in arrear for part of one of those years, and part of another, the lessor may distrain as for so much rent in arrear upon an entire lease, and is not obliged to make separate distresses as for several rents due on different demises. 2 Salk. 14.

If an apartment be let furnished, a distress may be made for the whole rent reserved, because, in contemplation of law, it issues out of that part of the demised premises which belongs to the realty. 2 New Rep. 224.

A landlord has no right to distrain, unless there be an *actual* demise to the tenant at a fixed rent. Therefore, where a tenant was in possession, under a memorandum of an agreement to let on lease, with a purchasing clause for twenty-one years, at the net clear rent of £63; the tenant to enter at any time on or before a particular day; it was held that this only amounted to an agreement for a future lease, and that no lease having been executed, and no rent subsequently paid, the landlord was not entitled to distrain. 5 Barn. & Ald. 322.

So where a party is in possession under an agreement for a lease, and no other circumstances exist whence an implied tenancy can be raised, since no rent is due for the occupation, but only (if any) a compensation in nature of a rent, the owner cannot distrain. 2 Taunt. 148.

A mortgagee, after giving notice of the mortgage to the tenant in possession under a lease prior to the mortgage, may distrain for the rent in arrear at the time of the notice (although he was not in the actual seisin of the premises, or in the receipt of the rents and profits at the time it became due), as well as for rent which may accrue after such notice, the legal title to the rent being in the mortgagee. Dougl. 278.

The 4 Geo. II. c. 28, s. 5, has placed bodies politic and corporate on the same footing as other persons with respect to the recovery of rents-seck, chief rents, and rents of assize.

A receiver appointed by the Court of Chancery may distrain for rent, where he sees it necessary.

One tenant in common may distrain for his share of the rent upon a ground-tenant holding under him and another tenant in common, if the ground-tenant pays the whole rent to the other, after notice not to pay it in that manner. 5 T. R. 246.

A man may distrain cattle without any express authority; and if he obtain the assent of the person in whose right he did distrain, his assent will be as effectual as his command could have been. 2 Leon. 196.

One of several co-heirs in gavelkind may distrain for rent due to himself and his co-heirs, without an express authority from them. 2 Brod. & Bing. 465.

Guardians may distrain as other persons granting leases in their own names. Cro. Jac. 55, 98.

Committees of the estates of lunatics are enabled, by the 43 Geo. III. c. 75, to grant leases of the lunatic's estate under the direction of the lord chancellor, and therefore are entitled to distrain.

By the 32 Hen. VIII. c. 37, the executors and administrators of tenants in fee, fee tail, or for life, or rent-services, rent-charges, rent-seck, and fee farms, may distrain upon the lands chargeable, so long as they remain in the possession of the tenant who ought to have paid, or of any other person claiming under him by purchase, gift, or descent. Sect. 3, gives the like remedy to husbands entitled in right of their wives, after the death of their wives. Sect. 4, gives the like remedy to tenants *pur autre*

vie, (for another life,) after the death of the *cestui que vie* (the previous liver.)

What things are distrainable.

As the distress for rent was anciently no more than a pledge in the hands of the lord, to compel the tenant to pay the service, or perform the duty, for which it was taken; it therefore at common law could not be sold, but, like all other pawns or pledges, was to be restored to the owner when the service or duty was performed.

'The nature then of contracting by pawns or pledges being, that, upon payment of the money for security whereof they were given, the pawn or pledge ought to be restored to the owner in the same plight and condition it was delivered; it follows, that *money* cannot be distrained except it be in a bag; for then the knowledge of the bag, especially if it be sealed, sufficiently secures the several pieces of money therein, so as the same individual pieces may be restored on redemption of the pledge. Rol. Abr. 666.

Nothing shall be distrained for rent which may not be rendered again in as good plight as when it was distrained; for which reason milk, fruit, and the like, cannot be distrained. Bla. Com.

Sheaves of corn, at common law, could not be taken as pledges for rent. Yet corn or hay *in a cart* might have been distrained, together with the cart. But by the 2 W. III. c. 5, "it shall be lawful for any, having arrear of rent, to seize and secure any sheaves or cocks of corn, or corn loose or in the straw, or hay lying in any barn or granary, or upon any hovel, stack, or rick, or otherwise, upon any part of the land charged with such rent, and to lock up or detain the same in the place where it shall be found, in the nature of a distress, until the same shall be replevied or sold." And by the 11 Geo. II. c. 19, s. 8 & 9, the landlord may take and seize corn, grass, hops, roots, fruits, pulse, or other produce *growing*, as a distress; and the same may cut, gather, make, cure, carry, and lay up when ripe in the barns, or other proper place on the premises; and if there shall be no barn or proper place *on the premises*, then in any other barn or proper place, which he shall procure, *so near as may be to* the premises, the appraisement whereof shall be taken when cut, gathered, cured, and made, and not before; provided that notice of the place where such distress shall be lodged, shall, in one week after the lodging thereof, be given to the tenant,

or left at the last place of his abode; and that if the tenant shall pay or tender the arrears of rent, and costs of the distress, before the corn, &c. shall be cut, the distress shall cease, and the corn, &c. be delivered up.

Trees, shrubs, and plants, growing on land converted into nursery ground, and planted subsequently to the demise, are not distrainable.

Tools and utensils of a man's trade cannot be distrained while there is any other distress on the premises, or even then while they are in actual use; and therefore the axe of a carpenter, the books of a scholar, and the like, are not distrainable while any other distress can be had, *or while they are in actual use.* Co. Lit. But where looms were distrained for rent, because there was no other sufficient distress upon the premises, the court held the distress good, as it did not appear that the looms were in actual use at the time they were taken. 4 T. R. 565. And where trover was brought for a stocking loom, which had been distrained for rent, and it appeared that an apprentice was using the loom at the time it was taken, the court held that it could not legally be taken while the apprentice was using it. 4 T. R. 568.

By the 51 Hen. III. st. 4. no man shall be distrained by the beasts of his plough, or his sheep, either by the king or any other, while *there is another sufficient distress;* unless for damage feasant, in which case the thing that does the trespass must make compensation.

Generally speaking, whatever goods and chattels the landlord finds upon the premises, whether in fact they belong to a tenant or a stranger, are distrainable by him for rent, unless they fall within any of the exceptions hereafter mentioned. Com. Dig.

A horse standing in a smith's shop to be shoed, or in a common inn, or cloth at a tailor's house, or corn sent to a mill or a market, are not liable to a distress; for all these are protected and privileged for the benefit of trade, and are supposed, in common presumption, not to belong to the owner of the house, but to his customers. Bla. Com.

The cattle and goods of a guest at a public inn are privileged; but the cattle or goods must be actually within the premises of the inn itself, to be exempted from distress, and not in any place the tenant may have removed them to, for his convenience; and this privilege, it seems, extends only to temporary guests; as a person who hires an unfurnished room in an inn, by such hiring becomes an under-tenant, and any furniture he may have brought into

such room will be liable to the landlord's distress. And this exemption extends only to common inns; therefore it has been held not to extend to the case of a chariot standing in the coach-house of a livery-stable keeper.

Goods carried to be weighed, even at a private beam, if in the way of trade, or a horse which has carried corn to a mill to be ground, and during the grinding of the corn is tied to the mill door, are privileged from a distress for rent.

A horse that brings corn to a market, and is put into a private yard while the corn is selling, cannot be distrained.

Goods are privileged from a distress whilst in the hands of a common carrier; and even a private person undertaking to carry them for hire is, for that purpose, considered as a carrier, and the goods are protected whilst they remain in his possession.

Goods of the principal in the hands of his factor cannot be distrained by the landlord of the factor's premises, for arrears of rent due to him from the factor.

The collector of the house and window tax, under the 43 Geo. III. c. 161, may distrain, for arrears of those taxes, the goods of a third person found on the premises charged, though the goods are only borrowed, and the person in arrear has other goods of his own on the premises sufficient to satisfy the arrears. 1 Maul. and Selw. 600.

If a stranger's beasts be upon the lord's land, by escape or otherwise, though they be not *levant et couchant*, the lord may distrain them, not only for rent, but for the accidental services of heriots, amerciaments in leets, &c.

If beasts are turned in upon land by consent of the owner, they are immediately distrainable for the landlord's rent; and therefore it hath been held, that where a stranger puts in his beasts to graze for a night, by the consent of the lessor, and licence of the lessee, yet the lessor may distrain them for rent due out of those lands which he consented the beasts should graze on; because the consent for putting in the beasts was not a waiver of his right to distrain, unless it had been expressly agreed so; for being but a parol agreement, it could not alter the original contract between the lessor and lessee, from which the power of distraining arises. 3 Lev. 209.

Cattle which are upon land by way of agistment, may be distrained for rent.

For a rent-charge the grantee cannot distrain a stranger's beasts until they are *levant et couchant*. For this rent doth not stand upon a feudal title, as the rent-service, but

it is said to be against common right; and, therefore, the stranger's beasts must be so long resident on the lands out of which the rent-charge issues, that notice may be presumed to the owner of them; that is, they must be lying down and rising up on the premises *for a night and a day*, without pursuit made by the owner of them.

Whatever is part of the freehold cannot be distrained. Hence, doors, windows, furnaces, &c. affixed to the freehold, are not distrainable.

Thus, a mill-stone is not distrainable, though it be removed out of its proper place in order to be picked; because such removal is *of necessity*, and the stone still continues part of the mill. So it is of a smith's anvil on which he works; for this is accounted part of the forge, though it be not actually fixed by nails to the shop.

Nor a kiln, which is considered not to be a personal chattel, but belonging to the freehold.

With respect to goods taken in execution, the 8 Anne, c. 14, s. 1, has given the landlord, to a certain extent, a lien on his tenant's goods when taken in execution, whereby it is enacted, "That no goods or chattels whatsoever, lying or being in or upon any messuage or lands which are or shall be for life or lives, terms of years, at will, or otherwise, shall be liable to be taken by virtue of any execution on any pretence whatsoever, unless the party at whose suit the said execution is sued out shall, *before the removal of such goods* off the said premises by virtue of such execution or extent, pay the landlord of the said premises, or his bailiff, all such sum or sums of money as are or shall be due for rent for the said premises at the time of taking such goods or chattels by virtue of such execution, provided the said arrears of rent do not amount to *more* than *one* year's rent." But, by s. 8, it is provided, that the crown may levy, or recover, or seize any goods for debts, fines, penalties, or forfeitures, as if this Act had not been made. And not only where an extent of the crown has actually issued, are the goods bound by it; but even without an extent, the debt itself is held to create an immediate lien on them, which in general cannot be divested; and this holds good, although the time for sale has expired, and an attachment has been moved for against the sheriff for not having sold the goods under the writ of *venditioni exponas*.

With respect to the landlord's right to his rent, as against an execution at the suit of the subject, the following decisions have taken place:—

The *immediate* landlord of the premises, and not the ground landlord, distraining the goods of an under-lessee, can claim under the statute.

The landlord must give notice to the sheriff in possession, and demand his rent, otherwise it is not the sheriff's duty to retain it; and demand must be made before removal.

The landlord is entitled to be paid his rent without any deduction of sheriff's poundage on the execution; but the sheriff may deduct such costs as were incurred before notice given to him of the rent due to the landlord.

Where a sheriff, with knowledge that there is rent due to the landlord, proceeds to sell the tenant's goods under a writ of *fieri facias*, without retaining a year's rent, he will be liable for it, although no specific notice has been given to him by the landlord.

If there be two executions on the tenant's goods, the landlord must demand out of one of them his whole rent.

And the landlord can only claim from the party suing the execution, the rent due at the time of taking the goods, and not that which accrues after the taking, and during the continuance of the sheriff in possession. 1 Maul. and Selw. 245.

An action for money had and received cannot be maintained by a landlord to recover the amount of a year's rent against the sheriff, who has sold his tenant's goods under an execution. The proper remedy is a special action on the case against the sheriff, for removing the goods from the premises under the execution, before the year's rent was paid to the landlord. 3 Camp. 260. Or, instead of bringing an action, the landlord may move the court, that he may be paid by the sheriff what is due to him out of the money levied.

If, upon the goods of a tenant being taken in execution, an agent of the landlord takes from the sheriff's officer an undertaking for a year's rent, and then consents to the goods being sold; the landlord cannot afterwards maintain an action against the sheriff for not paying a year's rent, or making the levy, although the rent is not paid according to the undertaking, and although the undertaking should be void under the Statute of Frauds, for not stating any consideration. 3 Camp. 24.

A commission of bankruptcy is not an execution within the meaning of the statute; and as the landlord, on the one hand, may distrain for his whole rent, even after assignment and sale by the assignees, before the goods are removed off the premises; so, on the other, if he suffer

the goods to be removed without distraining, he must in general come in for his rent in proportion with the other creditors. 15 East, 230.

A claim may be supported by a landlord, in an action against the sheriff for removing goods seized under a writ of *fieri facias*, for fore-hand rent, or rent stipulated by the lease to be paid in advance, as being rent due at the time of the seizure within the above statute; and such rent may be distrained for by the landlord, although he is aware that an execution is about to be sent down at the suit of a judgment creditor. 7 Price, 690.

Where a tenant's corn, while growing, was seized and sold under a *fieri facias*, and the vendee permitted it to remain till it was ripe, and then cut it; after which, and before it was fit to be carried, the landlord distrained it for rent; the court held it was not distrainable. But where corn was taken in execution and sold by the sheriff, under the 2 W. & M. c. 5, s. 3, and the vendee permitted it after severance to lie on the ground, the court held it was distrainable. Willes, 131.

If a constable become a bankrupt when possessed of goods which he has levied under a distress for rent due to a landlord, the landlord has a lien upon such goods; but if the goods are sold, and converted into money, he has not any lien on them, but must come in as a creditor with the rest. 7 Vin. Abr. 74.

Such things wherein no man can have an absolute and valuable property, as dogs, cats, rabbits, and all animals in a state of nature, cannot be distrained. Yet if deer, which are *feræ naturæ*, are kept in a *private* inclosure, for the purpose of *sale* or *profit*, this so far changes their nature, by reducing them to a kind of stock or merchandise, that they may be distrained for rent. Bla. Com.

Of the Time, Place, and Manner of making the Distress.

A man cannot distrain for *rent* or rent-charge in the night, that is, between sun-setting and sun-rising; because the tenant hath not thereby notice to make a tender of his rent, which possibly he might do, to prevent the impounding of his cattle. Co. Lit.

But a man may distrain in the night beasts damage feasant; because the beasts might escape before morning, or before he could take them, and then he would have no remedy for the injury.

Distress for rent must be for rent in arrear; therefore it must not be made the same day on which the rent becomes

due; for if the rent be paid at any time during that day, whilst a man can see to count it, the payment is good. Co. Lit.

A distress must not be *after* tender of payment; for if the landlord come to distrain the goods of his tenant for rent, the tenant may, *before* the distress, tender the arrearages, and if the distress be afterwards taken, it is illegal. So, if the landlord have distrained, and the tenant make a tender of the arrearages *before* the impounding of the distress, the landlord ought to deliver up the distress; and if he do not, the detainer is unlawful. Co. Lit.

At common law, the landlord must have distrained for rent in arrear during the continuance of the lease; but now, by the 8 Anne, c. 14, s. 6, 7, it is enacted, that it shall be lawful to distrain after the determination of the lease, in the same manner as if it had not been determined; provided that the distress be made within *six calendar* months *after* the determination of the lease, and during the continuance of the landlord's title or interest, and during the possession of the tenant.

Though chattels or pledges *on* the land only are to answer the lord's rent, yet if the lord come to distrain, and the tenant, seeing him, drives the cattle off the land, the lord may follow the beasts, and distrain out of his fee, if he had once a view of the cattle on his land. But if the beasts go off the land of themselves before the lord observe them, he cannot distrain them afterwards.

Where goods are clandestinely removed off the premises to prevent a distress, the landlord, by the 8 Anne, c. 14, s. 2, is authorised to follow and distrain them within five days. And by the 11 Geo. II. c. 19, s. 1, it is enacted, "That if any tenant for life, years, at will, sufferance, or otherwise, of lands or tenements, upon the demise whereof any rents are reserved, shall fraudulently or clandestinely convey or carry off his goods from such demised premises to prevent a distress, the lessor, or any person empowered by him, may, within *thirty* days next after conveying off, distrain such goods, wherever found, for rent in arrear, and sell or dispose of the same." Provided, before the seizure, such goods have not been sold *bonâ fide*, and for a valuable consideration, to a person not privy to the fraud. s. 2. And if any such tenant shall so fraudulently remove and convey away his goods or chattels, or if any person or persons shall wilfully and knowingly aid or assist him in fraudulent conveying away or carrying off any part

of his goods or chattels, or in concealing the same, every person so offending shall forfeit to the landlord double the value of the goods by him or them respectively carried off or concealed, to be recovered in any court of record at Westminster. s. 3.

And, by section 4, a penalty is inflicted on those assisting in such fraudulent concealment or removal, of double the value of the goods so concealed or removed: "Provided, that in case such goods do not exceed the value of fifty pounds, the landlord or his agent may exhibit a complaint in writing against such offender before two or more justices of the peace of the same county, riding, or division of such county, residing near the place whence such goods and chattels were removed, or near the place where the same were found, not being interested in the lands or tenements whence such goods were removed; who may summon the parties concerned, examine the fact, and all proper witnesses upon oath; and, in a summary way, determine whether such person or persons be guilty of the offence with which he or they are charged, and inquire in like manner of the value of the goods and chattels so fraudulently carried off or concealed; and, upon full proof of the offence, the said justices of the peace shall adjudge the offender to pay double the value of the said goods and chattels to such landlord; and, in case he shall refuse or neglect so to do, shall, by warrant under their hands and seals, levy the same by distress and sale of the goods and chattels of the offender; and, for want of such distress, may commit the offender to the house of correction, there to be kept at hard work, without bail or mainprize, for the space of six months, unless the money so ordered shall be sooner paid.

By sections 5 and 6, "Persons aggrieved by order of such two justices may appeal to the next general or quarter sessions, who may give costs to either party, and whose determination shall be final: provided, that where the party shall enter into a recognizance, with sufficient surety, in double the sum ordered to be paid, with condition to appear at the quarter sessions, such order shall not be entered against him in the mean time." But to bring a case within this statute, the removal must take place *after* the rent becomes due, and must be secret, not made in open day.

As this statute applies to the goods of the tenant only, and not to those of a stranger, a plea justifying the

following goods off the premises, and distraining them for rent arrear, must shew that they were the tenant's goods.

Justices of the county from which the tenants fraudulently remove goods, or of that in which they are concealed, may convict the offenders within their respective counties. And a creditor, with the assent of his debtor, may take possession of the goods of the latter, and remove them from the premises, for the purpose of satisfying a *bonâ fide* debt, without incurring the penalty inflicted by the third section of this act against persons assisting a tenant in removing his goods from the premises, although such creditor takes possession, knowing the debtor to be in distressed circumstances, under an apprehension that the landlord will distrain. 5 Maul. & Selw. 200.

If an outer door be open, an inner door may be broken open for the purpose of taking a distress. At common law, the lessor could not enter a house to distrain, if the door were not open, not even a barn, nor throw down any gate or inclosure, to get a distress. But by the 2 W. & M. c. 5, s. 3, any person having rent in arrear is enabled to distrain sheaves or cocks of corn, or corn loose, or in the straw, or hay laying in a barn or granary, or upon a hovel, stack, or rick, or otherwise, upon any part of the land charged with the rent, to be afterwards disposed of as directed by the statute. But it has been held, that this act does not authorise the distrainor to break open any padlocked barn or granary on the premises, in which corn, straw, or hay may be so deposited. Vin. Abr. tit. Distress, (E) 2.

And by the 11 Geo. II. c. 19, s. 7, where any goods fraudulently or clandestinely carried away by any tenant or lessee, or their servant, agent, or other person residing therein, shall be put into any house or other place locked up, or otherwise secured, so as to prevent such goods from being distrained for rent, the landlord or lessor, or his bailiff, may, in the day-time, with the assistance of the constable or other peace officer of the hundred, parish, or place, and in case of a dwelling-house, oath being also first made before some justice of the peace of a reasonable ground to suspect that such goods are therein, break open or enter into such house or place, and take and seize such goods for the arrears of rent, as he or they might have done by virtue of that or of any other former act, if such goods had been put into any open field or place.

If a landlord comes into a house, and seizes upon some goods as a distress in the name of all the goods in the house, it is a good seizure of the whole. 6 Mod. 215.

As, by the Statute of Marlbridge, a distress must not be excessive, the landlord must not distrain two or three oxen for 12*d*., nor a horse or an ox for a small sum, where a sheep or a swine may be had. But if there be no other distress on the land, then the taking of one entire thing, though of never so great value, is not unreasonable. 2 Inst. 107.

And it has been held, that even for a small demand a cart and horses may be distrained, because they are not severable from each other. 2 Vent. 183.

By the 17 Car. II. c. 7, in all cases where the value of the cattle distrained shall not be found to be of the full value of the arrears distrained for, the party to whom such arrears are due may distrain again for the residue of the arrears.

There can be no remedy upon the Statute of Marlbridge, where there is a remedy at common law. Nor if the plaintiff has recovered in replevin, can he afterwards bring an action on that statute; for an action on that statute is founded on there being a cause of distress, of which the recovery in replevin shews there was none; moreover, in replevin, damages were recoverable for the taking, and a man shall not be permitted to say there was a cause of distress, after he has recovered upon the ground of its being unlawful.

By the 2 W. & M. sess. 1, c. 5, s. 5, if a distress and sale be made as for rent in arrear and due, when not any is due, the owner may recover double the value, with full costs.

If the distress be made without cause, the owner may make rescue; yet, if in such case it be impounded, the owner cannot break the pound and retake it, because then it is in the custody of the law.

If cattle be impounded in a common public and open pound, the owner is bound to take notice of it; but if they are put into a private pound, then notice of the place must be given by the distrainor.

In case of a distress for growing crops, a particular notice is required by the 11 Geo. II. c. 19.

How the Distress is to be used and disposed of.

A pound is either *overt* (open) or *covert* (close). All living chattels distrained are regularly to be put in the

pound *overt*, because the owner at his peril is to sustain them, and therefore they ought to be put in such an open place as that he may have resort to them for that purpose.

At common law, a man might have impounded his distress in what county he pleased; but this was found very inconvenient to the owner, who was thereby at a loss where to find his beasts, either to feed or replevy them. This mischief was therefore provided against by the Statute of Marlbridge, c. 4. Yet upon this statute it hath been held, where the tenancy is in one county, and the manor in another, the landlord may drive the distress to the manor pound, though it be out of the county where the distress was taken; because the tenant, by attending the manor court, is presumed to know every thing transacted in the manor.

By the 1 & 2 Ph. & M. c. 12, s. 1, no distress of cattle shall be driven out of the hundred, rape, wapentake, or lathe, where such distress is or shall be taken, except that it be to a pound overt within the same shire, not above three miles distant from the place where the said distress is taken. And no cattle or other goods distrained or taken by way of distress, for any manner of cause at one time, shall be impounded in several places, whereby the owner or owners of such distress shall be constrained to sue several replevins for the delivery of the said distress so taken at one time, upon pain that every person offending contrary to this Act shall forfeit to the party grieved, for every such offence, a hundred shillings and treble damages. And, by section 2, no person shall take more than four-pence for impounding a distress, and where less hath been used shall take less, under a penalty to the party grieved of five pounds, together with the excess of the sum taken. In an action on this statute, the plaintiff cannot recover costs, because the statute does not mention costs, and no damages were recoverable in such case at common law. The offence by this statute is but a single offence, and shall be satisfied with one forfeiture, though three or four are concerned in doing the act. Cowp. 612.

The 11 Geo. II. c. 19, s. 10, authorises any person lawfully taking a distress *for any kind of rent*, to impound or otherwise secure the distress, of what nature or kind soever, in such place, or on such part of the premises chargeable with the rent, as shall be most fit and convenient for the same, and to appraise, sell, and dispose of it, as might before have been done, in case of a distress taken off the premises; and that any person may go to such

place or part of the premises, in order to view, appraise, and levy the goods distrained, and carry off and remove the same on account of the purchaser thereof.

Dead chattels, as household goods, &c. which may receive damage by the weather, or may be easily carried away, must be put into a pound *covert;* otherwise the distrainor is answerable for them, if they be damaged or stolen; and this pound *covert* must be within three miles in the same county.

The distrainor cannot work or use the thing distrained, whether it lie in a pound *overt* or *covert;* because the distrainor has only the custody of the thing as a pledge, and therefore is not to make use of it: but the owner may make profit of it at his pleasure. But there is an exception to this general rule in the case of milch kine, which may be milked by the distrainor; because it may be necessary to their preservation, and consequently of benefit to the owner.

The distrainor cannot tie or bind a beast in the pound, though it be to prevent its escape; for *beasts in pound are in custody of the law*, which intends the preservation of the pledge; and therefore the distrainor at his peril must do no act that tends to the hurt or destruction of them. But if cattle distrained die in the pound, without any fault in the distrainor, he who made the distress shall have an action of trespass: or may distrain again, if the distress was for rent.

If a distress be taken without cause, a stranger cannot rescue them from being driven to pound; but the owner may make rescue *before they are impounded.* But after the beasts are impounded, the owner himself cannot rescue them, unless he finds the pound unlocked, for he cannot break it open. The reason is, that the naked possession is a title against any person but the owner, but the owner has a title, and therefore may take the beasts at any time, though he cannot break the pound, which the law hath ordained.

By the common law, a man cannot break the pound, or the lock of it, or part of it.

And by the 2 W. & M. sess. 1, c. 5, s. 4, it is enacted, that "upon any pound breach, or rescue of goods distrained for rent, the party grieved thereby shall, in a special action *upon the case*, recover treble damages and costs against the offendor, or against the owner of the

goods, if they be afterwards found to have come to h use or possession."

It has been adjudged in an action on this statute, that the word "treble" shall be referred as well to the word "costs," as to the word "damages," and consequently that the costs shall be trebled as well as the damages.

When a man hath taken a distress, and the cattle distrained, as he is driving them to the pound, go into the house of the owner; if he that took the distress demand them of the owner, and he deliver them not, this is *a rescue* in law.

Proof of a tender after impounding of the distress, will not bar an action on this statute. 5 T. R. 432.

By the 2 W. & M. sess. 1, c. 5, s. 1, it is enacted, "That where any goods shall be distrained for rent reserved and due upon any demise, lease, or contract whatsoever, and the tenant or owner of the goods distrained shall not, within five days next after such distress taken, and notice thereof (with the cause of such taking) left at the chief mansion-house or other most notorious place on the premises, replevy the same; in such case the person distraining shall, with the sheriff or under-sheriff of the county, or with the constable of the hundred, parish, or place where such distress shall be taken, cause the goods so distrained to be appraised by two sworn appraisers, whom such sheriff, under-sheriff, or constable, shall swear to appraise the same truly, according to the best of their understandings; and, *after* such *appraisement*, shall *sell* the same for the best price that can be gotten for them, for satisfaction of the rent and charges of the distress, appraisement, and sale; leaving the overplus (if any) with the sheriff, under-sheriff, or constable, for the owner's use."

The five days allowed by the Act are inclusive of the day of sale (1 H. Bl. 13); and if the goods remain unsold, the tenant may replevy after the five days. 1 Chit. Rep. 196.

A reasonable time after the expiration of five days from the time of distress is by law allowed by the landlord for appraising and selling the goods distrained. And in Pitt *v.* Shaw (4 Barn. & Ald. 208), the court held, that it was lawful for the landlord, and those under him, to remain more than five days upon the premises for the purpose of selling the goods distrained. By law he could not sell till five days had expired; and, taking the Acts together, it is clear it must be left to the jury to say, what is a reasonable time after that period, in which to sell the goods.

In an action on the case for selling goods distrained for rent in arrear before five days had expired next after the distress was taken and notice given, the court held, that, as soon as five days (allowing twenty-four hours to each day, and computing the beginning of each from the moment when the notice was given) had expired, the distress might be removed and sold. Thus, where a distress was made, and a regular notice of sale given in the morning of the 12th day of May, and in the afternoon of the 17th the goods were removed and sold, it was held that on the evening of the 17th five days from the time of the distress had completely expired, and that the removal and sale was regular, according to the time allowed by the statute.

By the 56 Geo. III. c. 50, to regulate the sale of farming stock taken in execution, it is enacted, That no sheriff or other officer shall, by virtue of any process, carry off, or sell, or dispose of, for the purpose of being carried off from any lands let to farm, any straw threshed or unthreshed, or any straw of crops growing, or any chaff, colder, or any turnips, or any manure, compost, ashes, or seaweed, in any case whatsoever, nor any hay, grass or grasses, whether natural or artificial, nor any tares or vetches, nor any roots or vegetables, being the produce of such lands, in any case where, according to any covenant or written agreement entered into for the benefit of the landlord, such hay, grass or grasses, tares and vetches, roots or vegetables, ought not to be taken off from such lands, or which, by the tenor of such covenants, ought to be used thereon, and of which such sheriff or officer shall have received a written notice before sale. s. 1.

The tenant shall, on having knowledge of such process, give a written notice to the sheriff or officer of such covenants, and also of the name and residence of the landlord; and such sheriff or officer shall forthwith, and before sale, send a notice by the general post to the landlord, and also to the known steward or agent of such landlord, stating the fact of possession having been taken; and such sheriff or officer shall, in all cases of the absence or silence of such landlord or his agent, postpone the sale until the latest day he lawfully can. s. 2.

But the sheriff or officer may dispose of any crops hereinbefore mentioned, to any person who shall agree in writing to use the same on such lands, in such manner as shall accord with the custom of the country; and, in cases where any covenant or agreement shall be shewn, then according to such covenant; and after such sale, so qua-

lified, it shall be lawful for such persons to use all such necessary barns, stables, buildings, outhouses, yards, and fields, for the purpose of consuming such crops, as such sheriff or officer shall allot to them for that purpose, and which such tenant would have been entitled to have used for the like purpose. s. 3.

And such sheriff or officer shall, on the request of any landlord aggrieved by any breach of such agreement, permit such landlord to bring any action in the name of such sheriff or officer for the recovery of damages, such landlord having indemnified such sheriff or officer against costs. s. 4.

Such sheriff or officer shall, before sale, make due inquiry within the parish, as to the name and residence of the landlord. s. 5.

And in all cases where any purchaser shall have entered into any agreement with such sheriff or officer, it shall not be lawful for the landlord to distrain for rent on any corn, hay, straw, or other produce, severed from the soil, and sold, subject to such agreement, by such sheriff or officer; nor on any turnips, whether drawn or growing, if sold according to this Act; nor on any horses, sheep, or other cattle, nor on any beasts whatsoever, nor on any waggons, carts, or other implements of husbandry, which any person shall employ or use for the purpose of threshing out, carrying, or consuming any such produce, under this Act, and the agreement between the sheriff or officer and the purchasers of such produce. s. 6.

No sheriff or officer shall sell any clover, rye-grass, or any artificial grass whatsoever, newly sown, and growing under any crop of standing corn. s. 7.

But this Act shall not extend to any straw, turnips, or other articles, which the tenant may remove from the farm consistently with some contract in writing. s. 8.

Where any action shall be brought against such sheriff or officer, no plaintiff shall be entitled to recover any damages, unless it be proved that the breach or omission was wilful. s. 9.

No sheriff or under-sheriff, nor any of their deputies, agents, bailiffs, or servants, nor any persons who shall purchase any hay, straw, chaff, turnips, grasses, or other produce before-mentioned, under this Act, shall be deemed to be a trespasser by reason of coming upon or remaining in possession of any barns or other buildings, yards, or fields, for the purpose of threshing out or consuming any straw, hay, turnips, or other produce under this Act, or

for doing any thing necessary, though such acts shall have been done after the return of the process. s. 10.

No assignee of any bankrupt or any insolvent debtor's estate, nor any assignee under any bill of sale, nor any purchaser of the goods, chattels, stock, or crop of any person engaged in husbandry on any lands let to farm, shall take, use, or dispose of any matters as aforesaid, in any other manner than such bankrupt, insolvent debtor, or person employed in husbandry, ought to have taken, used, or disposed of the same. s. 11.

At common law, the many particulars which attended the taking of a distress rendered it a hazardous mode of proceeding; for if any one irregularity was committed, it vitiated the whole distress, and made the distrainor a trespasser *ab initio*. But the 11 Geo. II. c. 19, s. 19, 20, and 21, only makes the distrainor a trespasser for that part which is irregular, but allows the injury done to the tenant to be a trespass or case, according to the cause of action.

A landlord cannot justify, under the plea of the general issue given by this act, except for acts done as landlord; and therefore, although he may justify as far as the distress goes, he cannot justify expulsion under this issue. So also, if the goods continue on the premises beyond the five days, he cannot justify, under this issue, entering the house to remove them afterwards; but must plead a licence to justify the *asportavit*, or *liberum tenementum* to justify the expulsion. N. P. Hil. Term, 31 Geo. III.

An action of trover will not lie for goods sold before five days have expired next after the distress and notice; that not being a remedy which can be pursued since 11 Geo. II. c. 19, as it tends to place the landlord in the same situation as he was before the passing of that Act. The action ought to be brought specially for the particular irregularity. 1 H. Bl. 17.

By the 57 Geo. III. c. 93, "for regulating the costs of distresses levied for payment of small rents," after reciting, that "Whereas divers persons acting as brokers, and distraining on the goods and chattels of others, or employed in the course of such distresses, have of late made excessive charges, to the great oppression of poor tenants and others, and it is expedient to check such practices," it is enacted, "That no person whatsoever making any distress for *rent*, where the sum demanded and due shall not exceed the sum of £20 for and in respect of such rent; nor any persons whatsoever employed in any man-

ner in making such distress, or for carrying the same into effect, shall have, take, or receive, out of the produce of the goods or chattels distrained upon and sold, or from the tenant distrained on, or from the landlord, or from any other person whatsoever, any other or more costs and charges, for and in respect of such distress or any matter or thing done therein, than as follows:—Levying distress, 3*s.*; man in possession, 2*s.* 6*d.* per day; appraisement, whether by one broker or more, 6*d.* in the pound on the value of the goods; stamp, the lawful amount thereof; all expenses of advertisements, 10*s.*; catalogues, sale and commission, and delivery of goods, 1*s.* in the pound on the net produce of the sale. And no person or persons shall make any charge for any act, matter, or thing, unless such act shall have been really done. s. 1.

"And if any person whatsoever shall in any manner levy, take, or receive from any person or persons whatsoever, or retain or take from the produce of any goods sold for the payment of such rent, any other or greater costs and charges than herein mentioned; or make any charge whatsoever for any act, matter, or thing not really done; it shall be lawful for the party or parties aggrieved by such practices to apply to any one justice of the peace for the county, city, town, and acting for the division where such distress shall have been made, or in any manner proceeded in, for the redress of his, her, or their grievance so occasioned; whereupon such justice shall summon the person or persons complained of to appear before him, at a reasonable time to be fixed in such summons; and such justice shall examine into the matter of such complaint by all legal ways and means, and also hear in like manner the defence of the person or persons complained of; and if it shall appear to such justice that the person or persons complained of shall have levied, taken, received, or had, other and greater costs and charges than are mentioned in this Act, or made any charge for any matter or thing, such act, matter, or thing not having been really done, such justice shall order and adjudge treble the amount of the moneys so unlawfully taken to be paid by the person or persons so having acted, to the party or parties who shall have thus preferred his, her, or their complaint thereof, together with full costs. And in case of nonpayment of any moneys or costs so ordered and adjudged to be paid, such justice shall forthwith issue his warrant to levy the same by distress and sale of the goods and chattels of the party or parties ordered to pay such

moneys or costs, rendering the overplus (if any) to the owner or owners, after the payment of the charges of such distress and sale: and in case no sufficient distress can be had, such justice shall, by warrant under his hand, commit the party or parties to the common gaol or prison within the limits of the jurisdiction of such justice, there to remain until such order or judgment be satisfied. s. 2.

"And it shall be lawful for such justice, at the request of the party complaining or complained against, to summon all persons as witnesses, and to administer an oath to them touching the matter of complaint, or defence against it; and if any person or persons so summoned shall not obey such summons, without any reasonable or lawful excuse, or refuse to be examined upon oath (if a Quaker, upon solemn affirmation), then every person so offending shall forfeit and pay a sum not exceeding 40*s*., to be ordered, levied, and paid in such manner, and by such means, and with such power of commitment, as is hereinbefore directed as to such order and judgment to be given between the party or parties in the original complaint, excepting so far as regards the form of the order, as hereinafter provided for. s. 3.

"And it shall be lawful for such justice, if he shall find the complaint of the party or parties aggrieved is not well founded, to order and adjudge costs not exceeding 10*s*. to be paid to the party or parties complained against; which order shall be carried into effect, and levied, and paid in such manner, and with like power of commitment, as is hereinbefore directed as to the order and judgment founded on such original complaint: provided always, that nothing herein contained shall empower such justice to make any order or judgment against the landlord for whose benefit any such distress shall have been made, unless such landlord shall have personally levied such distress. Provided always, that no person or persons who shall be aggrieved by any distress for rent, or by any proceedings had in the course thereof, or by costs and charges levied upon them in respect of the same, shall be barred from any legal or other suit or remedy, which he, she, or they might have had before the passing of this Act; excepting so far as any complaint to be preferred by virtue of this Act shall have been determined by the order and judgment of the justice before whom it shall have been heard and determined; and which order and judgment shall and may be given in evidence, under the plea of the

general issue, in all cases where the tenor of such complaint shall be made the subject of any action. s. 4.

"And such orders and judgments on such complaints shall be made in the form in the schedule annexed to this Act, and may be proved before any court, by the proof o the signature of the justice to such order and judgment; and such orders as regard persons who may have been summoned as witnesses, shall be made in such form as to such justice shall seem most fit and convenient. s. 5.

"And every broker or other person, who shall make and levy any distress whatsoever, shall give a copy of his charges, and of all the costs and charges of any distress whatsoever, signed by him, to the person or persons on whose goods and chattels any distress shall be levied, although the amount of the rent demanded shall exceed the sum of £20." s. 6.

And by the 7 and 8 Geo. IV. c. 17, it is enacted, "That all the rules, regulations, clauses, provisions, penalties, matters, and things, in the 57 Geo. III. c. 93, contained, shall extend, and shall be applied and put in execution, with respect to any distress or levy which shall be made for any *land tax, assessed taxes, poor's rates, church rates, tithes, highway rates, sewer rates, or any other rates, taxes, impositions, or assessments whatever*, in all cases where the sum demanded and due for and in respect of such taxes, rates, tithes, assessments, or impositions, shall not exceed the sum of twenty pounds, and in all cases where the whole of the several sums sought to be levied by distresses taken for different purposes at the same time shall not exceed the sum of twenty pounds; and such costs and charges, and no other, shall be taken and payable as the costs and charges of the levy and disposition of such distresses; and all such proceedings shall and may be had and taken against any person transgressing the regulations of the said Act in the levying or distraining for any such taxes, rates, impositions, or assessments; and all such persons shall be liable to and shall incur such and the like penalties, as by the said Act are directed, required, and imposed with respect to persons making any distress for rent contrary to the directions of the said Act; and that in any order or judgment of any justices before whom any complaint shall be preferred in consequence of this Act, such order shall be expressed to be made upon a complaint for the breach of the said recited Act, as amended by this Act."

PRACTICAL PROCEEDINGS FOR MAKING A DISTRESS.

Having thus given a very general outline of the principles upon which the remedy by distress is founded, and enabled the reader to determine whether there is or is not a right to distrain, we proceed to the practical means of enforcing the law of distress.

The landlord may distrain himself, if he pleases, and has a sufficient confidence that he can, from his own knowledge, or experience, proceed in the right way, and not subject himself to any penalty for deviating from the law, or for exceeding his proper authority; to avoid which, however, it is usual, and in many cases better, to employ some one else to do it; and then the landlord must give such person a proper authority to distrain for him. This may be done in the following simple form, which will serve in ordinary cases.

Mr. Arthur Bateman,

I do hereby authorise you to distrain the goods and chattels of Thomas Neverpay, on the premises now in his possession, situate at   in the county of   for   pounds, being half a year's rent due to me for the same at   day last; and for your so doing this shall be a sufficient warrant of authority.

Dated this   day of   , one thousand eight hundred and   G. H.

Where the necessity of distraining is likely to happen often, a regular warrant to distrain, or a letter of attorney, is frequently kept by the agent, ready executed by the landlord. The forms of these instruments are as follow:

Letter of Attorney, to empower a Person to Distrain.

Know all men by these presents, that I, A. B. of the parish of   in the county of   Esq. for divers good causes and considerations me thereunto moving, have made, nominated, authorised, constituted, and appointed, and by these presents do make, nominate, authorise, constitute, and appoint C. D. of   in the county aforesaid, Esq. and E. F. of the said place, gentleman, jointly and severally, my true and lawful attorney and attorneys, for me, and in my name, place, and stead,

either jointly or severally, to enter into and upon all that messuage or tenement, farms, lands, hereditaments, and premises, situate and being in the parish of in the county aforesaid, or one of them, and now in the tenure or occupation of G. H. yeoman, his under-tenants or assigns, and held by him of me at or under the yearly rent of pounds, and to make or cause to be made, one or more distress or distresses on all or any hay, corn, goods, chattels, cattle, beasts, sheep, or other effects or things whatsoever, standing, lying, or being, in or upon the said demised premises, or any part thereof, for all such rent or rents, as was or were due, owing, or in arrear unto me at day last past, for or on account of the said premises, or any part thereof; and such distress or distresses, when made or taken, for me and on my behalf, to hold, detain, and keep, or cause to be held, detained, and kept, until payment and satisfaction be made unto me for all such rent due and in arrear unto me, and all costs and charges of making such distress; and, in case of nonpayment thereof within the time limited, after such distress made, by the laws now in force, to appraise, sell, and dispose of the same, or cause the same to be appraised, sold, and disposed of according to law; I, the said A. B. hereby giving and granting unto my said attorneys and attorney, jointly and severally, full power and authority, for me and in my name, on my behalf, to do or cause to be done, all such acts, matters, and things whatsoever, touching, concerning, or any ways relating to the said premises, as shall or may be necessary to or for the purposes aforesaid, as fully and effectually, to all intents and purposes whatsoever, as if I myself was personally present, and did the same, hereby ratifying, confirming, and allowing, all and whatsoever my said attorneys or attorney, or either of them, shall lawfully do, or cause to be done, in or about the said premises, by virtue of these presents. In witness whereof, I the said A. B. have hereunto set my hand and seal, this day of in the year of our Lord one thousand eight hundred and

A.B.

Sealed and delivered (being first duly stamped) in the presence of us, } S. M. P. R.

Form of a Warrant to Distrain.

Know all men by these presents, That I, F. G. of London, Esq. do hereby authorise and appoint T. C. of gentleman, to take any person or persons to his

assistance, and to enter into the house of A. B. in and there make a distress of all such goods and chattels as are in and upon the premises, or any part thereof, for pounds, for one half year's rent due to me the said F. G. at day last; and, after the said goods are so distrained, if the said A. B. does not, within the time limited by law, pay the said rent, or replevy the said goods, then and in such case I do hereby authorise you the said T. C. to cause the said goods to be appraised, and, according to such appraisement, to make sale thereof to such person or persons who will buy the same, and to dispose of the money arising by the sale in such manner as by the statute made for that purpose is directed; and for your so doing this shall be your sufficient warrant. Witness my hand and seal, this day of in the year of our Lord one thousand eight hundred and

F. G.

The proper way of making a distress for rent in arrear is, for the person to go upon the premises for which the rent is due, and take hold of some piece of furniture or other article there, and say (if the distress be made by the landlord himself), "I seize this chair (or other thing, as the case may be) in the name of all the goods and effects on these premises, for the sum of , being half a year's rent due to me at day last." Or (if the distress be made by some person empowered by the landlord) say, "for the sum of due to I. T. Esq. the landlord of these premises, at day last, by virtue of an authority from him the said I. T. Esq. to me given for that purpose."

An inventory is then to be made of so many of the goods, &c. as will be sufficient to recover the rent and expenses of the distress, appraisement, and sale; which is not required to be on a stamp, as the 23 Geo. III. c. 58, s. 51, expressly excepts an inventory of goods distrained.

The person who distrains the goods may take the inventory. An appraiser is not *necessary* till after the end of the five days allowed the tenant by 2 W. & M. to pay the rent or replevy the goods, but it is proper to take a witness of the regularity of the proceedings.

The inventory being taken, you must make a fair copy of it, and write at the bottom a notice (as below) to the tenant, to inform him that such distress has been made, and of the time when the rent and charges of the distress must be paid, or the goods replevied; which, with

the notice thereunder written, must be either given to the tenant himself, or to the owner of the goods. Or it may be left at the house, with any person dwelling therein; or if there be no person in the house, on the table in the kitchen, or some other notorious part of the house.

The safest way is to remove the goods immediately, and in the notice to acquaint the tenant where they are removed to; but it is now most usual to let them stay on the premises, and leave a man in possession to protect them till you are entitled to sell them by law, which is on the seventh day, as the statute says you are to give five days' notice, and it is understood to be five whole days, exclusive of the day the distress was made.

The man in possession of the goods is to be paid two shillings and sixpence per day, if kept by the tenant, and three shillings and sixpence if he keeps himself.

Form of an Inventory and Notice to be served on a Tenant when Distress is taken of his Goods, &c. for Rent Arrear.

An Inventory of the several goods and chattels distrained by me, W. J. the tenth day of April, one thousand eight hundred and in the dwelling-house *(apartment, or otherwise, as the case may be)* of T. P. situated at in the county of by the authority and in the behalf of J. F. the landlord of the said premises, for pounds, being half a year's rent due to him the said J. F. at day last, and as yet in arrear and unpaid.

I. *In the Kitchen.*

	£.	s.
2 Wainscot tables......................		
6 Old chairs		
3 Copper saucepans......................		
2 Pottage pots, &c......................		

II. *In the Parlour.*

1 Large pier looking-glass...............		
2 Sconces in gilt frames.................		
2 Mahogany card tables, &c...............		
1 Pembroke table.........................		

III. *In the Dining Room.*

6 Hair-bottom chairs, mahogany frames, &c.		
1 Set of dining tables		

And at the bottom, add,

Mr. T. P.

Take notice, that I, as bailiff to Mr. J. F. have this day distrained the goods and chattels mentioned in the above inventory for the sum of pounds, being half a year's rent due at day last, for the premises above-mentioned, and have secured the goods and chattels in the front parlour of the said house; and that unless the said arrears of rent and charges of distress are paid, or the goods and chattels replevied within five days from the date hereof, the said goods will be appraised and sold according to law.

Dated, &c. W. J.

A true copy of the above inventory and order was this day of 18 delivered to the above mentioned T. P. in the presence of us,

JOHN MARTIN,
GEO. ELLIOTT.

[N. B. If the goods are secured off the premises, what relates to the securing of the goods must be omitted, and the notice must inform the tenant of the place where.]

Where the sheriff is in possession of the goods of a tenant on an execution, the landlord cannot make a distress, but should forthwith serve him with the following notice.

To B. C. Esq. Sheriff of the County of

Take notice, that there is now due from T. P. the person to whom the goods belong you are now in possession of by virtue of his Majesty's writ of *fieri facias*, &c. returnable [*here mention the return*] the sum of pounds, for half a year's rent due at day last. As witness my hand, this day of 18

J. F. *Landlord of the Premises.*

On receipt of this notice, the sheriff must pay the rent, or he will himself be liable to the landlord, if he take away the goods without doing so.

But where there is no sheriff in possession on an execution, and the tenant wants further time to raise the money, and the landlord chooses to give him such indulgence, he must take a memorandum from the tenant, that possession is continued at his request, and by his desire, or the landlord will be a trespasser in continuing

the same beyond the time limited by the statute, and liable to an action for so doing. It may be in the following words:

Form of a Tenant's Consent to the Landlord's continuing in possession, upon the Premises, of Goods distrained, after the seventh day.

I, T. P. do hereby consent, that J. F. my landlord, who, on the tenth day of last, distrained my goods and chattels for rent due to him, shall continue possession thereof on the premises for the space of seven days from the date hereof; the said J. F. undertaking to delay the sale of the said goods and chattels for that time, in order to enable me to discharge the said rent. And I, the said T. P. do hereby agree to pay the expenses of keeping the said possession. Witness my hand, this seventeenth day of April, one thousand eight hundred and

T. P.

If no further time should be allowed, at the expiration of the fifth day from the time of the distress and notice the sheriff's office should be searched, to know if the goods have been replevied. If they have not, go to the premises where, if the rent and charges of the distress are not paid, you should send for a constable of the hundred, parish, or place, where the goods were distrained, and two sworn appraisers, who, having viewed the goods, must be sworn by the constable in the usual way.

If the distress is taken in two hundreds, the constable of the place where the distress is driven, or put, is the proper officer under the act of 2d William and Mary.

The following is the Oath to be administered to both the Appraisers

You, and either of you, shall make a true appraisement of the goods now shewn to you, and mentioned and contained in this inventory [*the constable having at the same time the inventory in his hand, shewing the same*] according to the best of your judgment. So help you God.

The sheriff, under-sheriff, or constable, are empowered to swear them; and when this is done, the constable must make a memorandum of the appraisers being sworn, in the following words on the inventory:

Memorandum, that on the day of 18 S. M. of and D. L. of two sworn appraisers, were sworn on the Holy Evangelists by me,

W. O. of constable, to make a true appraisement of the goods and chattels mentioned in this inventory, according to the best of their judgment. Witness my hand,

W. O. *Constable.*

After the appraisers are sworn, and have viewed and valued the goods, they must sign a memorandum on the inventory, to the following effect:

"We, the above-named S. M. and D. L. being sworn on the Holy Evangelists by W. O. constable above-named, to make a true appraisement of the goods and chattels mentioned in the above inventory, according to the best of our judgment, and having viewed the said goods and chattels, do adjudge and value the same at the sum of pounds, and no more. As witness our hands, this day of 18

S. M.
D. L. } *Sworn Appraisers.*

After the goods are sold for the best price you can get for the same, you must deduct the arrears of rent, and all reasonable charges; and the overplus (if any) must be paid or applied to the tenant's use.

By a late Act of Parliament, the charges for making a distress for a small amount are regulated; for the particulars of which the reader is referred to page 118 of this Work, and they should be carefully observed.

A person distraining cannot be one of the sworn appraisers, he being interested in the business.

The goods being thus valued, they are usually bought by the appraisers at their own valuation; and a receipt at the bottom of the inventory, witnessed by the constable, or other person who swore them, is usually held a sufficient discharge.

If a distress be of considerable value, it is advisable to have a proper bargain and sale between the landlord, the constable, the appraisers, and the purchaser, for the better proving the transaction afterwards, should it be found necessary.

The consequent proceedings, on the tenant taking his remedy of replevin, we have before given under the head of TENANTS, and to which we refer, as illustrating the proceedings in a suit of this kind, until it is completed.

RECOVERY OF RENT BY ACTION FOR DEBT.

Besides the remedy afforded to the landlord for recovery of his rent by distress, he has a remedy by action of debt, though originally this right was considerably fettered by restrictions, with respect to some sorts of rent, which it is not now necessary to notice, since these inconveniences and mischiefs are all remedied by the 8 Anne, c. 14, which provides, "That it shall be lawful for any person or persons having *any rent* in arrear, or due upon any lease or demise for life or lives, to bring an action of debt for such arrears of rent, in the same manner as they might have done in case such rent were due and reserved upon a lease for years. And by the 32 Hen. VIII. c. 37, the *executors* of a man seised either of a *rent charge*, *rent seck*, or *rent service*, either in fee-simple or in tail, have a *double* remedy given them for such arrears, either by action of *debt* or *distress:* and the action not only lies against the tenant that ought to have paid, but against his executors and administrators. And by 11 Geo. II. c. 19, "Where any tenant for life shall die before or on the day on which any rent was reserved, upon any demise which determined on the death of such tenant for life, his executors or administrators may, in an action on the case, recover of the *under-tenants*, if such tenants for life die on the day on which the same was made payable, the whole; or if before such day, then a proportionate part of such rent."

Where a lessee for years assigns over his lease to another person, the lessor may still maintain an action of debt for rent in arrear after the assignment. But if the lessor accept the assignee either tacitly or expressly, and accept rent from him, he cannot come upon the first lessee.

Where rent is reserved, either quarterly or half-yearly, each gale may be considered as a distinct debt, for which an action of debt may be maintained by the lessor; and the declaration may be for any one entire gale at the end of any quarter, without showing how any former quarter or half-year has been satisfied. But if the declaration be for a part of the gale due at the end of any particular quarter, it will be bad, unless it be shown how the remaining part was satisfied. And whenever any rent is reserved quarterly, half-yearly, or yearly, or at any other fixed or stated period, the declaration should state the precise time when it became due.

If the declaration be for less rent than a year, where the

reservation is an annual rent, without showing how the other part was satisfied, it will be fatal; and no action can be maintained for half a year's rent, or a quarter's, where the rent is reserved annually.

Where the action is founded on the lease, and the plaintiff undertakes in his declaration to recite it, any misrecital will be fatal. For example; where the reservation upon a lease was a gross sum and three fowls as rent, and the declaration stated the gross sum, but omitted the fowls, the variance was held to be fatal; and the declaration must also show the certainty of the lands demised.

The venue may be laid either where the land lies, or where the lease was executed; or if the action be against the original lessee, in any place. But if the action be against the assignee, or the executor of the lessee, it must be brought where the lands lie; for they are chargeable on the privity of estate only.

It is hardly necessary to enter here into the various pleas in defence to an action for rent; for they are such as may be easily anticipated by any sensible landlord. We may, however, just mention that the several pleas are,—

1. *Nil debet*, or, nothing is owing; under which, when a landlord has covenanted to repair, and brings his action for debt, the tenant may plead that he owes nothing, because he has expended the rent in repairs which the landlord had covenanted to do; but this must be pleaded specially, as it cannot be given in evidence under the general issue.

2. *Non est factum*, or the fact is otherwise, is a plea, which obliges the landlord to prove the execution of the deed under which he claims rent, a matter generally easy enough to do, but this plea is fatal to an action where it cannot be done; and, in sustaining this plea, the tenant may offer in evidence any thing that may prove the deed to be void, although it may have been delivered as his act and deed; but if he put in *rasure* (erasure) and *sic non est factum*, (and *so* the fact is otherwise,) he can only give in evidence the erasure which makes the contrariety.

3. *Riens en arriere*, or, nothing in arrear, is a good plea, under which the validity of the lease may be denied, if there be any grounds for it; and under this plea may be pleaded payment *at* or *after* the day, or *tender* on the land; but in the latter case the *proffer* of the money must be *made* and *proved*. A landlord's acceptance of a bond, will not extinguish the claim for rent, until after judgment on the bond is obtained, and then it does.

4. *Entry* and *eviction*, if the entry is wrongful; but eviction for a trespass merely will not be sufficient, nor a mere illegal ouster.

In Hunt *v.* Cope, Cowp. 242, the lessee put in a plea in bar, that the lessor entered the demised premises, broke up and pulled down the ceiling of a summer house, and tore up the benches; but as the plea did not set forth eviction, it was held bad.

If *eviction and expulsion* be pleaded in bar, it must state that the lessee was kept out of possession until after the rent became due. And in this action the defendant may either put in the plea of *entry and expulsion*, or offer it in evidence on a plea of *Nil debet*.

Besides these pleas in bar to an action of debt, *infancy* may be pleaded. But as a lease to an infant or person under age is not void, but only voidable; if it be beneficial to him, he will be liable to the rent reserved, and consequently will upon non-payment be subject to an action of debt for rent due.

The statutes of set-off are applicable to actions of debt for rent, and may be pleaded to a general issue in this action The right of set-off was first given by the 2 Geo. II. c. 22, wherein it is enacted, that where there are mutual debts between the plaintiff and defendant, or if either party sue or are sued as executors or administrators where there are mutual debts between the testator or the intestate and the other party, one debt may be set off against the other, and such matter given in evidence on the general issue, or pleaded in bar. But if intended to be given in evidence on the general issue, notice must be given of the *particular sum* intended to be set off, and on *what account* it has become due.

As regards the Statute of Limitations, the act may be pleaded where the demise is not by deed; but it has been held that arrears of rent reserved on an indenture of lease do not come within the meaning of the act.

A release of "all demands" will release rent due, but not what is growing due.

Where an action is brought for rent due by husband and wife, upon a lease by her and her first husband, a plea that her first husband was sole seised, will be a good plea in bar to an action against her.

Of the Recovery of Rent by Action of Assumpsit for Use and Occupation.

Where a demise is not by deed, instead of the ancient mode of bringing an action of debt for rent, it is now usual to lay it for *use* and *occupation.*

In this action for use and occupation, the declaration need not set forth any demise in the premises, or for what term, or for what rent, or length of occupation, or when the rent became due, or for what time.

But occupation must be proved; and if the declaration state the particulars of a demise, they must be proved.

This action for use and occupation is under the 11 Geo. II. c. 19, s. 14, which enacts, that it shall and may be lawful to and for the landlord or landlords, *where the agreement is not by deed,* to recover a reasonable satisfaction for the lands, tenements, or hereditaments held or occupied by the defendant or defendants, in an action on the case *for the use and occupation of what was so held or enjoyed;* and if, in evidence on the trial of such action, any parole demise, or any agreement (not being by deed) whereon a certain rent was reserved, shall appear, the plaintiff in such action shall not therefore be nonsuited, but may make use thereof as an evidence of the *quantum* of the damages to be recovered.

And although the Act provides a remedy in cases only where the agreement is not by deed, yet it has been held, that where a defendant held under a mere agreement for a lease, which did not amount to an actual demise, the plaintiff might maintain assumpsit, although the agreement was by deed.

Where a lease by deed has expired, and tenant holds over, the landlord may bring assumpsit against the tenant for the subsequent use and occupation, or against the under-tenant, and he will be liable upon the covenants of the expired lease.

The Courts have given a wide construction to the Act of the 11 Geo. II. c. 19, s. 14; and a long course of decisions have settled, that where one party occupies premises by permission of another, although without any agreement being in contemplation, the fact of occupancy under such circumstances is sufficient to raise an implied assumpsit. Taunt. 147.

Assumpsit will lie against a tenant, in some cases, for use and occupation, although the premises are burnt down, and no longer inhabitable. And where a tenant quits

without giving notice, he will be liable still for use and occupation.

In Cobb *v.* Carpenter (2 Camp. 13) for use and occupation, it was held, that where defendant did not come into possession under plaintiff, the latter could only recover rent from the time he has had the legal estate in him, although he may have had the equitable estate long before.

An action of assumpsit for use and occupation cannot be maintained where the premises are let for an illegal purpose, or where they are let for purposes *contra bonos mores,* (against good morals.) 1 Esp. R. 13. Nor will it lie where the title is in question. Wood. f. 407.

Where a woman *feme sole* has occupied a house and marries, the husband cannot be sued alone for the use and occupation. 1 B. & B. 50.

It is a general rule, that wherever the tenant uses or enjoys the premises by permission of the landlord, he will be liable to an action of assumpsit for use and occupation. 8 T. R. 327.

Where a landlord in the middle of a quarter accepts the key from the tenant upon a parol agreement, that possession being given up the rent should cease, and he fails to take possession, he cannot bring assumpsit for use and occupation after his acceptance of the key. 5 Taunt. 518.

Also, where a landlord lets a house to a tenant, and afterwards accepts another with the consent of the first tenant, and receives rent, he cannot afterwards recover rent from the first. 2 Stark, 408.

Of the Landlord's Remedy for Breach of Covenant by the Tenant, his Executors, Administrators, or Assigns.

An action of covenant by the landlord against his tenant lies as well for the breach of any covenants either express or implied, as for rent. But it can only be brought where the lease is either by indenture or deed poll. F. N. B. 145, (L).

* And if the agreement be by indenture, it is sufficient, to maintain this action by a covenantee against a covenantor, that he has sealed and delivered it to the covenantee, though the latter never sealed it. Cro. Eliz. 212.

In a lease where the words are "yielding and paying" so much rent, this is construed into an agreement to pay rent, and amounts to a covenant; and where a lease is in these words, "yielding and paying such rent free and clear of all rates, taxes, and impositions whatsoever, whether parliamentary or parochial;" the action of co-

venant will lie, if lessee do not pay the entire rent free from all taxes whatsoever. Carth. 135.

The assignees of a reversion could not maintain an action of covenant upon express covenants against lessees or their assigns. But by the 32 Hen. VIII. c. 34, grantees and assignees of reversions after estates for lives or years may maintain the same actions, for not performing the covenants expressed in their leases, against the lessees and their assigns, as the grantors might have done; and lessees and their assigns may maintain the same actions against the assignees of reversions, for any covenant contained in their leases, as they might have had against their lessors.

An action of covenant cannot be maintained against an under lessee; for the original lessee being one of the parties to the original contract, he will always be liable, notwithstanding any assignment he may make, unless he be released by the lessor.

The term *assignee* extends to assignees in deed, and assignees in law, as tenant by statute merchant, statute staple or elegit, tenant by the courtesy, husband possessed of the term of his wife by survivorship, or the vendee of a term under execution; also to the assignee of an assignee, and to the executor and administrator of an assignee, and to an assignee of an executor or administrator. Spencer's Case, 5 Rep. 17. Com. Dig. Cov. (B) 3. Bac. Ab. Cov. (E)

The 32 Hen. VIII. c. 34, extends to all covenants which concern the land, but not to collateral covenants. Co. Lit. 215, b.

Thus, an assignee of a reversion may bring an action on a covenant to pay rent, or not to commit waste, to leave the demised premises in good repair, to make a wall where it is so covenanted, to build houses, or to dung the land yearly. Com. Dig. (B) 3. Cro. Eliz. 600. Moor. 159. 3 Bro. C. C. 166.

But the statute will not extend to pay a sum in gross. Co. Lit. 215. Nor to covenants made with a stranger to the land, which are collateral. As, where a mortgagor and mortgagee of a term of years made an underlease, in which the covenants for rent and repairs were with the mortgagor and his assigns only, it was held, that the assignee of the mortgagee could not maintain an action for a breach of them, because they were entered into with the mortgagor only, who is a stranger to the land. 3 T.R. 402.

The assignee of a term may sue on a covenant in law. 4 Rep. 80 (B); and upon all covenants that run with

the law, Com. Dig. Cov. (B) 3. But an assignee cannot sue upon a contingent covenant, or upon a possibility, as that if the lessor upon his view finds the land well conditioned at the end of the term, he will make a new lease. Moor, 27.

Where a covenant relates to the inheritance, the heir may bring an action upon it. Also, if the premises continue out of repair, the heir may bring the action of covenant to repair during his ancestor's life. Com. Dig. Covenant, (B) 2. 1 Salk. 141.

Where a covenant extends to a thing *in esse*, parcel of the demise, as a covenant to repair, it will bind the assignee, though not named. 5 Rep. 24 (A).

Covenants that, technically speaking, "run with the land," will bind assignees though not named. Also a covenant to reside constantly on the demised premises, to leave part of the land every year for pasture, to renew, to discharge lessor from all charges whether ordinary or extraordinary, to pay rent, to pay a *nomine pœnæ* for every day that rent is in arrear, to use the land in a husbandlike manner, to rebuild, &c.; but where a covenant relates to a thing not in being at the time of the demise, but conditioned to be done upon the thing demised, it will bind the assignee only if named. 5 Rep. 15.

In cases of bankruptcy, if the assignees accept the lease, the bankrupt will be discharged from all covenants, by 6 Geo. IV. c. 16, s. 75.

Where a lessee for years assigns, and the assignee holds over after the term, he will be liable for rent. Bac. Abr. Cov. (E) 3.

Under an absolute assignment of a term, the assignee may be sued on the covenants before he has taken actual possession. Doug. 461, n. 1.

Where a party takes an assignment of a lease by way of mortgage, as security for money lent, the whole interest therein passes to him, and he becomes liable for the rent to the lessor, and the action of covenant will lie against heirs, if the covenantor covenant for himself and heirs; for an heir is bound to perform his ancestor's covenant, where he is benefited by the contract, although he claim nothing but what was settled on him by strict settlement.

Executors and administrators are bound by the covenants of the testator or intestate, although not named, and they may be sued as assignees.

In the pleadings in an action of covenant, the plaintiff

should state in his declaration that the instrument was by deed, and he need not set forth more than is necessary to entitle him to recover. He must put in the deed in evidence, unless he plead that it is lost; but, in pleading a lost deed, the supposed names of the parties to it, and the date, must be set forth.

In an action for the mismanagement of a farm, it will be sufficient in the declaration to state that part of the lease truly which applies to the breach on which the action is brought, if that part which is omitted do not qualify that which is stated. 13 East's R. 18.

Where the action is against an assignee, the declaration may state him generally as assignee, without stating the intermediate assignments. And it is not sufficient to state that the land came to the defendant by assignment; the declaration must state that he is assignee of the term.

Where action of covenant is brought by an assignee of a term, the declaration must set forth all the mesne assignments down to himself; and where it is brought by the assignee of the reversion, it must state the several mesne conveyances down to himself.

Where plaintiff cannot sue in this action without the performance of something to be done by him, the declaration should state the performance.

The action for rent must be brought where the lands lie. 2 East's R. 575.

The several pleas to an action of covenant may be—1. Performance; 2. Other covenants in bar; 3. *Non est factum;* 4. Entry and eviction; 5. Release; 6. Accord and satisfaction; 7. Tender and refusal; 8. *Riens en arrière;* and, 9. Infancy; the bearings of which we have before explained, except *covenants in bar*, which allow a tenant to set off the non-performance of a covenant by himself, by shewing the non-performance of another by his landlord:—and *release*, which means the consent of the landlord to leave the performance of the covenant in abeyance; with *accord* and *satisfaction*, which sufficiently imply the abandonment of any claim upon the tenant; but, with regard to the plea of *release*, the defendant cannot put in this plea unless it be by deed; for the covenant being created by deed, it can only be discharged by the same power.

With respect to judgment in the action of covenant, it will only be given for such damages as the party can prove he has actually sustained; and if the defendant has judgment given against him upon a *Nil dicit*, confession,

or demurrer, a writ of inquiry will be awarded to ascertain the damages. Townsend, book ii. Judgm. Saund. 47.

The Landlord's Remedy for Waste.

It is generally covenanted that a tenant shall not commit *waste:* and if he does, an action will lie against him for damages to the amount.

Waste is the spoil or destruction brought on any estate, either in houses, lands, or woods, by a tenant for life or years, to the damage of him in reversion or remainder; and is either voluntary, which is a crime of commission, as pulling down a house; or permissive, as by suffering it to fall for want of repairing.

And it is the same, to permit a house to be burnt by negligence, if the tenant do not repair the same. But if the house be consumed or destroyed by thunder, lightning, tempests, floods, enemies, it is no waste in the lessee.

To convert a brewhouse into tenements, although of a greater value; or of a corn mill into a fulling mill, &c. is waste: for things must be used in their natural and proper manner, and not be altered.

If a lessee covenant to leave a house in as good condition as he found it, and during the term do waste, an action will not lie before the time expires. But it will in a covenant for leaving wood or timber, if it be cut down by the lessee; for then it is not possible for him to perform his agreement, to leave it the same as he found it.

If timber, reserved by law to the lessor or landlord, be cut down by the lessee or tenant, the lessor may take it away. And the lessee having an interest only in trees while standing, as in the fruit, shrowd, shadow, &c., if he fell timber trees, or do any other act whereby they may decay, it is waste.

Cutting down fruit trees in an orchard or garden, though used for repairs, is waste; but not if they grow in a field. To suffer young germins to be destroyed by cattle, or stubbing up quickset hedges, &c. are waste; as are also cutting down green wood, if there be dry, or more fire-bote than is necessary But tenants may cut underwood, and take wood sufficient to repair the pales, hedges, and fences, and what is called by law *plough-bote, fire-bote*, and *other house-bote.*

Changing the course of husbandry, as if ancient meadow-ground be ploughed up, it is waste; but where meadow hath been at any time arable, or sometimes meadow and sometimes pasture, it will be no waste to plough it up,

If a lessee for years convert a meadow into hop-ground, it is no waste, because it may easily be made meadow again; but the converting it into an orchard is waste, though it may be more profitable. It is waste, to suffer a wall of the sea to be in decay, by reason whereof the meadow-ground is surrounded with salt water, and rendered unprofitable: and not scouring a moat or ditch, whereby the groundsils of the house, &c. are rotten, is waste.

The digging mines of metal, coals, &c. hidden in the earth, and that were not open when the tenant came in; or for lime, brick, stone &c. without power of the covenant, will be waste: though the tenant may dig in an open mine, and for gravel, clay, earth, &c. for reparations of the house.

Destroying deer in a park, doves in a dove-house, or fish in a pond, &c. or if such stores be not left by the lessee as he found them when he entered on the land, it is waste: and so is any thing which abridges the lessor's annual profits of the lands. Ibid.

If a lease be made without impeachment of waste, it takes off all restraint from the tenant of doing it; and in such case he may pull up or cut down wood or timber, or dig mines, &c. at his pleasure, and not be liable to any action of waste.

Persons who may be injured by waste must have some interest in the estate wasted; for if a man be the absolute tenant in fee-simple, without any incumbrance or charge on the premises, he may commit what waste he pleases, without being impeachable or accountable for it to any one; for though his heir be the sufferer, yet no man is certain of succeeding him, on account of the uncertainty who shall die first, and because he can constitute what heir he pleases.

The most usual and important interest hurt by the commission of waste is that of him who hath the remainder or reversion of the inheritance after a particular estate for life or years in being. To him therefore to whom the inheritance appertains in expectancy, the law hath given an adequate remedy: but he who hath the remainder for life only is not entitled to sue for waste, since his interest may never perhaps come into possession, and then he hath suffered no injury. Yet a parson, vicar, archdeacon, prebendary, and the like, who are seised in right of their churches of any remainder or reversion, may have an action of waste; for they, in many cases,

have, for the benefit of the church and of the succession, a fee-simple qualified.

Having thus given from the best authorities a general statement of the various circumstances which will be considered waste by the law, we will proceed to show the remedy which the law has provided for the landlord.

The remedy for waste, under the Statute of Gloucester (6 Edw. 1.), is of two kinds, preventive and corrective: the former by writ of estrepement; and the latter by action of waste.

A writ of *estrepement*, at common law, against waste, lies against a party where judgment has been recovered, but who, until execution, remains in possession. The word signifies to *draw away the heart* of the ground by continually ploughing and sowing it, without manuring or otherwise using it in a husbandlike manner, whereby the estate is injured. Cutting down trees, or lopping them farther than is allowed by law, is implied by the term.

This writ is extended to waste pending the suit; and as soon as the action is commenced, the sheriff may, by virtue of it, forcibly resist all such persons as persist in committing waste, and may, if necessary, commit them to prison; and if the tenant, after the delivery of the writ, proceed to commit waste, an action will lie against him, and he will be liable to damages. 2 Inst. 328.

But, besides this preventive redress at common law, the Court of Chancery, upon bill exhibited therein, complaining of waste and destruction, will grant an injunction in order to stay waste, until the defendant shall have put in his answer, and the Court shall thereupon make further order; which is now become the most usual way of preventing waste.

A writ of *waste* is an action partly founded upon the common law, and partly upon the Statute of Gloucester; and may be brought by him who hath the immediate estate of inheritance in reversion or remainder, against the tenant for life, tenant in dower, tenant by the courtesy, or tenant for years. This action is also maintainable in pursuance of West. 2, by one tenant in common of the inheritance against another, who makes waste in the estate only in common. The equity of this statute extends to joint tenants, but not to coparceners: but these tenants in common and joint tenants are not liable to the penalties of the Statute of Gloucester, which extends only to such as have life estates, and do waste to the prejudice of the inheritance. The waste, however, must be something

considerable; for if it amount only to twelve pence, or some such petty sum, the plaintiff shall not recover in an action of waste.*

The action of waste is a mixed action; partly real, so far as it recovers land; and partly personal, so far as it recovers damages; for it is brought for both these purposes: and if the waste be proved, the plaintiff shall recover the thing or place wasted, and also treble damages, by the Statute of Gloucester.

When the waste and damages are ascertained, either by confession, verdict, or inquiry of the sheriff, judgment is given in pursuance of the Statute of Gloucester, c. 5, that the plaintiff shall recover the place wasted, for which he has immediately a writ of *seisin*, provided the particular estate be still subsisting (for if it be expired, there can be no forfeiture of the land), and also that the plaintiff shall recover treble damages, assessed by the jury; which he must obtain in the same manner as all other damages in actions personal and mixed are obtained, whether the particular estate be expired, or still in being.

Certain difficulties, however, attending the action of waste, have of late induced parties to resort to another mode of action, which is an action on the case in the nature of waste, for the recovery of damages committed by the tenant during his occupation; and this mode is more eligible than the other, inasmuch as the Statute of Gloucester gives in the action of waste no more *costs* than *damages;* so that if five shillings only were recovered as damages for waste, only five shillings costs would follow, which would punish the plaintiff instead of benefiting him; whereas by action on the case taxed costs are recoverable: and in the action on the case also, the reversioner or remainder-man for life or years may bring the action; and it is maintainable against tenant by sufferance; to all which the action of waste will not lie. 2 Wms. Saund. 252, n. 7. Cro. Car. 187. And the lessor may bring an action on the case for waste against the lessee, notwithstanding the lease contains an express covenant against waste, and gives him his remedy by action of covenant. Bla. Rep. 1111.

In the declaration, either in an action on the case, or in

* Coke says, if *forty* pence only are recovered, the defendant shall have judgment; but different wastes may be united; and if the jury find twenty pence in one house, twenty-two pence in another, and eight pence in a third, these added together will entitle the plaintiff to judgment.

the action of waste, it is necessary to state *particularly* the kind of waste; and evidence of a different sort of waste to what is laid in the declaration will not be allowed. 3 T. R. 307. But in an action on the case for waste, the plaintiff is not bound to prove the whole waste stated in the declaration, nor need the jury in their verdict find how much of the place, but may assess the damages generally. Wms. Saund.

Of the Landlord's Remedy for recovering Possession by Action of Ejectment.

Ejectment is a mode of proceeding by which the title to the possession of corporeal hereditaments and tithes may be tried, and possession obtained.

A writ of *ejectione firmæ*, or action of trespass in *ejectment*, lies where lands or tenements are let for a term of years, and afterwards the lessor, reversioner, remainder-man, or any stranger, ejects or ousts the lessee of his term. In this case he shall have his writ of *ejection*, to call the defendant to answer for entering on the lands so demised to the plaintiff for a term that is not yet expired, and ejecting him. And by this writ the plaintiff shall recover back his term, or the remainder of it, with damages; and since the disuse of real actions, this mixed proceeding is become the common method of trying the title to lands or tenements.

This is one of the *fictions* by which the *practice* supplies the *defect* of the law; and, the better to apprehend how this end is effected, we must state that the remedy by ejectment in its original is an action brought by one who hath a lease for years, to repair the injury done him by dispossession. In order, therefore, to convert it into a method of trying titles to the freehold, it is first necessary that the claimant take possession of the lands, to empower him to constitute a lease for years, that he may be capable of receiving this injury of dispossession. When, therefore, a person, who hath a right of entry into lands, determines to acquire that possession which is wrongfully withheld by the present tenant, he makes (as by law he may) a formal entry on the premises; and, being so in the possession of the soil, he there, upon the land, seals and delivers a lease for years to some third person, or lessee; and, having thus given him entry, leaves him in the possession of the premises. This lessee is to stay upon the land, till the prior tenant, or he who had the previous possession, enters thereon afresh, and ousts him; or till

some other person (either by accident, or by agreement beforehand) comes upon the land, and turns him out, or ejects him. For this injury the lessee is entitled to his action of ejectment against the tenant, or this *casual ejector*, whichever it was that ousted him, to recover back his term and damages.

But where this action is brought against such a casual ejector, and not against the very tenant in possession, the Court will not suffer the tenant to lose his possession without any opportunity to defend it. Wherefore it is a standing rule, that no plaintiff shall proceed in ejectment to recover lands against a casual ejector, without notice given to the tenant in possession (if any there be), and making him a defendant if he please. And in order to maintain the action, the plaintiff must, in case of any defence, make out four points before the Court, viz. *title*, *lease*, *entry*, and *ouster*. First, he must show a good *title* in his lessor, which brings the matter of right entirely before the Court; then, that the lessor, being seised or possessed by virtue of such title, did make him the *lease* for the present term; thirdly, that he, the lessee, or plaintiff, did *enter*, or take possession, in consequence of such lease; and then, lastly, that the defendant *ousted* or ejected him Whereupon he shall have judgment to recover his term and damages; and shall, in consequence, have a *writ of possession*, which the sheriff is to execute by delivering him the undisturbed and peaceable possession of his term. But, as much trouble and formality were found to attend the actual making of the *lease*, *entry*, and *ouster*, a new and more easy method of trying titles by writ of ejectment is now practised. This entirely depends upon a string of legal fictions: no actual lease is made, no actual entry by the plaintiff, no actual ouster by the defendant; but all are merely ideal, for the sole purpose of trying the title. To this end, in the proceedings, a lease for a term of years is stated to have been made by him who claims title, to the plaintiff who brings the action, as by T. A. to A. B.; which plaintiff ought to be some real person, and not merely an ideal fictitious one who hath no existence, as is frequently, though unwarrantably, practised: it is also stated, that A. B. the lessee entered, and that the defendant C D. who is called the *casual ejector*, ousted him; for which ouster he brings this action. As soon as this action is brought, and the complaint fully stated in the declaration, C. D. the casual ejector, or defendant, sends a written notice to the tenant

in possession of the lands, as E. F., informing him of the action brought by A. B. and transmitting him a copy of the declaration; withal assuring him, that he, C. D. the defendant, has no title at all to the premises, and shall make no defence; and therefore advising the tenant to appear in Court and defend his own title; otherwise he, the casual ejector, will suffer judgment to be had against him, and thereby the actual tenant E. F. will inevitably be turned out of possession. On receipt of this friendly caution, if the tenant in possession do not within a limited time apply to the Court to be admitted a defendant in the stead of C. D. he is supposed to have no right at all; and upon judgment being had against C. D. the casual ejector, E. F. the real tenant will be turned out of possession by the sheriff.

But if the tenant in possession applies to be made a defendant, it is allowed him upon this condition—that he enter into a rule of court to confess, at the trial of the cause, three of the four requisites for the maintenance of the plaintiff's action, *viz.* the *lease* of T. B. the lessor, the *entry* of A. B. the plaintiff, and his *ouster* by E. F. himself, now made the defendant instead of C. D.; which requisites being wholly fictitious, should the defendant put the plaintiff to prove them, he must of course be nonsuited for want of evidence; but by such stipulated confession of *lease*, *entry*, and *ouster*, the trial will now stand upon the merits of the *title* only. This done, the declaration is altered, by inserting the name of E. F. instead of C. D. and the cause goes down to trial under the name of A. B. (the plaintiff), on the demise of T. B. (the lessor), against E. F. (the new defendant). And therein the lessor of the plaintiff is bound to make out a clear title, otherwise his fictitious lessee cannot obtain judgment to have possession of the land for the term supposed to be granted. But if the lessor make out his title in a satisfactory manner, then judgment and a writ of possession shall go for A. B. the nominal plaintiff, who by this trial has proved the right of T. B. his supposed lessor.

When a stranger brings an action of ejectment against the tenant, the landlord may appear and be made defendant; and in order to prevent fraudulent recoveries of the possession, by collusion with the tenant of the land, all tenants are obliged by the 11 Geo. II. c. 19, on pain of forfeiting three years' rent, to give notice to their landlords, when served with any declaration in ejectment: and any landlord may, by leave of the Court, be made a co-defen-

dant to the action, in case the tenant himself appear to it; or if he make default, though judgment must be then signed against the casual ejector, yet execution shall be stayed, in case the landlord applies to be made a defendant, and enters into the common rule.

But if the new defendants, whether landlord or tenant, or both, after entering into the common rule, fail to appear at the trial, and to confess lease, entry, and ouster, the plaintiff A. B. must indeed be there nonsuited, for want of proving those requisites; but judgment will in the end be entered against the casual ejector, C. D.; for the condition on which E. F. or his landlord was admitted a defendant, is broken, and therefore the plaintiff is put again in the same situation as if he never had appeared at all; the consequence of which would have been, that judgment would have been entered for the plaintiff, and the sheriff, by virtue of a writ for that purpose, would have turned out E. F. and delivered possession to A. B. The same process therefore as would have been had, provided no conditional rule had been ever made, must now be pursued, as soon as the condition is broken.

Where an ejectment is defended merely to continue the possession of the premises, and no defence is made at the trial, the practice is, for the crier of the Court, first, to call the defendant to confess lease, entry, and ouster, and then the plaintiff, as in other cases of nonsuit, to come forth, or he will lose his writ of *nisi prius*.

Though in this case the judgment be given against the casual ejector, yet the costs are taxed as in other cases; and if the real defendant refuse to pay them, the Court will grant an attachment against him.

In like manner, if there be a verdict for the defendant, or the nominal plaintiff be nonsuited without the default of the defendant, the defendant must tax his costs, and sue out a writ of execution against the nominal plaintiff; and if, upon serving the lessor of the plaintiff with this writ, and a copy of the rule to confess lease, entry, and ouster, the lessor of the plaintiff do not pay the costs, the Court will grant an attachment against him.

In ejectment, the unsuccessful party may re-try the same question as often as he pleases, without the leave of the Court; for by making a fresh demise to another nominal character, it becomes the action of a new plaintiff upon another right; and the Courts of Law cannot any farther prevent this repetition of the action, than by ordering the proceedings in one ejectment to be stayed till the costs of a

former ejectment, though brought in another Court, be discharged. But a Court of Equity, where there have been several trials for the same premises, and the title was entirely legal, has granted a perpetual injunction.

The damages recovered in these actions (since the title has been considered as the principal question) are generally very small and inadequate; amounting commonly to one shilling, or some other trivial sum. In order therefore to complete the remedy, when the possession has been long detained from him that had the right to it, an action of trespass also lies, after a recovery in ejectment, to recover the mesne profits which the tenant in possession has wrongfully received. Which action may be brought in the name of either the nominal plaintiff in ejectment, or his lessor, against the tenant in possession; whether he be made party to the ejectment, or suffer judgment to go by default. In this case the judgment in ejectment is conclusive evidence against the defendant for all profits which have accrued since the date of the demise stated in the former declaration of the plaintiff; but if the plaintiff sue for any antecedent profits, the defendant may make a new defence; and he may also plead the Statute of Limitations, and by that means protect himself from the payment of all mesne profits, except those which have accrued during the last six years.

But a writ of ejectment is not an adequate means to try the title of all estates; for on those things whereon an entry cannot in fact be made, no entry shall be supposed by any fiction of the parties. Therefore an ejectment *will not lie* of an advowson, a rent, a common, or other incorporeal hereditament; except for tithes in the hands of lay appropriators, by the express purview of the 32 Hen. VIII. c. 7; which doctrine hath since been extended by analogy to tythes in the hands of the clergy: nor will it lie in such cases where the entry of him that hath right is taken away by descent, discontinuance, twenty years' dispossession, or otherwise.

Ejectment must be brought for a thing that is certain; as of the manor of A, and so many messuages, cottages, acres of arable land, meadow, &c. with the appurtenances, in the parish of, &c. For the nature of the land must be set forth, and be distinguished, how much of one sort and how much of another. If a person bring ejectment of an acre of land in two parishes, and the whole is in one, he shall recover; so where an ejectment is of an acre of land in A, and part of it lies in B, he may recover for such part

as lies in A. And if a man hath title to a fourth part only, and he bring his action for the whole, he shall recover his fourth part of the lands.

Of the Action of Ejectment for Nonpayment of Rent.

The action of ejectment for nonpayment of rent is rendered very easy and expeditious to landlords by the 4 Geo. II. c. 28, sec. 2, which enacts, "That, in all cases between landlord and tenant, as often as it shall happen that *one half year's rent shall be in arrear*, and the landlord or lessor to whom the same is due hath *right by law to re-enter for the nonpayment thereof;* such landlord or lessor shall and may, *without any formal demand or re-entry*, serve a declaration in ejectment for the recovery of the demised premises; or, in case the same cannot be legally served, or *no tenant be in actual possession of the premises*, may then *affix the same* upon the door of any demised messuage; or in case such ejectment shall not be for the recovery of any messuage, then upon some notorious place of the lands, tenements, or hereditaments comprised in such declaration in ejectment, and *such affixing shall be deemed legal service thereof;* which service, or affixing such declaration in ejectment, shall *stand in the place and stead of a demand and re-entry;* and if, in case of judgment against the casual ejector, or of nonsuit for not confessing a lease, entry, and ouster, it shall be made appear to the Court where the said suit is depending, *by affidavit, or be proved upon the trial* in case the defendant appears, *that half a year's rent was due before the said declaration was served, and that no sufficient distress was to be found on the demised premises* countervailing the arrears then due, and *that the lessor or lessors in ejectment had power to re-enter*, in every such case the lessor or lessors in ejectment shall recover judgment and execution, in the same manner as if the rent in arrear had been legally demanded, and a re-entry made. And in case the lessee or lessees, his, her, or their assignee or assignees, or other person or persons claiming or deriving under the said lease, shall permit and suffer judgment to be had and recovered on such ejectment, and execution to be executed thereon, without paying the rent and arrears together with full costs, and without filing any bill or bills for *relief in equity within six calendar months* after such execution executed; then such lessee or lessees, his, her, or their assignee or assignees, and all other persons claiming or deriving title under the said lease, shall be barred and foreclosed from all relief in law or equity,

other than by writ of error for reversal of such judgment, in case the same shall be erroneous; and the said landlord and lessor shall from thenceforth hold the said demised premises discharged from such lease. And if, on such ejectment, verdict shall pass for the defendant, or the plaintiff shall be nonsuited therein, except for the defendant's not confessing, then such defendant shall recover his, her, or their full costs." But, in order to secure mortgagees, the Act goes on to provide, "that nothing therein contained shall extend to bar the right of any mortgagee or mortgagees of such lease, or any part thereof, who shall not be in possession, so as such mortgagee or mortgagees, *within six calendar months after such judgment obtained and execution executed* against the tenant, pay all rent in arrear, and all costs and damages sustained by such lessor, or persons entitled to the remainder or reversion as aforesaid, and perform all the covenants and agreements which, on the part and behalf of the first lessee or lessees, ought to be performed."

And by sec. 3, "In case the said lessee or lessees, his, her, or their assignee or assignees, or other person claiming any right, title, or interest, in law or equity, of, in, or to the said lease, shall, *within the time aforesaid*, file one or more bill or bills for relief in any Court of Equity, such person or persons shall not have or continue any injunction against the proceedings at law on such ejectment, unless he, she, or they, within forty days next after a full and perfect answer shall be filed by the lessor or lessors of the plaintiff in such ejectment, bring into Court, and lodge with the proper officer, such sum of money as the lessor or lessors of the plaintiff in the said ejectment shall, in their answers, swear to be due and in arrear, over and above all just allowances, and also the costs taxed in the said suit; there to remain till the hearing, or to be paid out to the lessor or landlord on good security, subject to the decree of the Court. And in case such bill or bills shall be filed within the time aforesaid, and after execution is executed, the lessor or lessors of the plaintiff shall be accountable only for so much, and no more, as he, she, or they shall really and *bonâ fide*, without fraud, deceit, or wilful neglect, make of the demised premises from the time of their entering into the actual possession thereof; and if what shal be so made by the lessor or lessors of the plaintiff happen to be less than the rent reserved on the said lease, then the said lessee or lessees, his, her, or their assignee or assignees, before he, she, or they shall be restored to his, her, or their

possession or possessions, shall pay such lessor or lessors, landlord or landlords, what the money so to them paid fell short of the reserved rent, for the time such lessor or lessors of the plaintiff, landlord or landlords, held the said lands."

If the tenant, however, before the trial in such ejectment, *pay or tender* to the lessor or landlord, or pay into the Court where the same cause is depending, *all the rent* in arrear, together with *the costs*, in such case all further proceedings on the said ejectment shall cease and be discontinued; and if such lessee or lessees, his, her, or their executors, administrators, or assigns, shall, upon such bill filed as aforesaid, be relieved in equity, he, she, and they shall have, hold, and enjoy the demised lands according to the lease thereof made, without any new lease to be thereof made to him, her, or them.

When there has been a recovery in ejectment under this statute, and the possession acquiesced in, there cannot be a new ejectment brought on the ground that the judgment was by default, and that it did not appear there had been any affidavit then made by the lessor of the plaintiff, that "half a year's rent was in arrear, and no sufficient distress to be had;" for, the proceedings being under the statute, the Court will in such case presume that they were regular.

Where a tenant at a rack-rent has vacated the premises, and half a year's rent is in arrear, the legislature has provided for the landlord a summary remedy by which to recover possession; which remedy he may have recourse to, although the lease contain no clause of re-entry. For the 11 Geo. II. c. 19, sec. 16, enacts, "That if any tenant, holding any lands, tenements, or hereditaments at a rack-rent, or where the rent reserved shall be three-fourths of the yearly value of the demised premises, who shall be in arrear for one year's rent, shall desert the demised premises, and leave the same uncultivated or unoccupied, so as no sufficient distress can be had to countervail the arrears of rent, it shall and may be lawful to and for two or more justices of the peace of the county, riding, division, or place, (having no interest in the demised premises,) at the request of the lessor or landlord, or his or her bailiff or receiver, to go upon and view the same, and to affix or cause to be affixed, on the most notorious part of the premises, notice in writing what day (at the distance of fourteen days at least) they will return to take a second view thereof: and if, upon such second view, the tenant, or some person upon his or her behalf, shall not appear and pay the

rent in arrear, or there shall not be sufficient distress upon the premises, then the said justices may put the landlord or lessor into the possession of the said demised premises; and the lease thereof to such tenants, as to any demise therein contained only, shall from henceforth become void."

But the proceedings of such justices are examinable in summary way by the next justice or justices of assize of the respective counties in which such lands or premises lie; and if they lie in the city of London or county of Middlesex, by the judge of the Courts of King's Bench or Common Pleas; and if in the counties palatine of Chester, Lancaster, or Durham, then before the judges thereof; and if in Wales, then before the Courts of Grand Session respectively; who are empowered to order restitution to be made to such tenant, with expenses and costs, to be paid by the lessor or landlord, if they shall see cause for the same; and in case the act of the first justices is affirmed, to award costs not exceeding 5*l.* for the frivolous appeal against the tenant.

By the 57 Geo. III. c. 52, the provisions of this statute are extended to tenants who shall be in arrear *one half year's rent*, and who shall hold the lands under any demise or agreement, whether written or *verbal*, and although no right or power of re-entry be reserved or given to the landlord in case of nonpayment of rent.

And still further to facilitate the recovery of lands and tenements by landlords, it is enacted by the 1 Geo. IV. c. 87, sec. 1, that "Where the term or interest of any tenant holding under a lease or agreement in writing any lands, tenements, or hereditaments, for any term of years certain, or from year to year, shall have expired or been determined, either by the landlord or tenant, by regular notice to quit, and such tenant, or any one holding or claiming by or under him, shall refuse to deliver up possession, after demand in writing made and signed by the landlord or his agent, and served personally upon or left at the dwelling-house or usual place of abode of such tenant or person, and the landlord shall thereupon proceed by action of ejectment for the recovery of possession, it shall be lawful for him, at the foot of the declaration, to address a notice to such tenant, or person holding under him, requiring him to appear in the Court in which the action shall have been commenced, or the first day of the term then next, or if the action shall be brought in Wales or in the counties palatine, then on the first day of the next session or assizes, or at the court-day or other period for appearance to process

then next following, there to be made defendant, and to find such bail, if ordered by the Court, and for such purposes, as are hereinafter next specified; and upon the appearance of the party at the day, or in case of non-appearance, on making the usual affidavit of service of the declaration and notice, it shall be lawful for the landlord, producing the lease or agreement, or some counterpart, and proving the execution of the same by affidavit, and upon affidavit that the premises have been actually enjoyed under such lease or agreement, and that the interest of the tenant has expired, or been determined by regular notice to quit, and that possession has been lawfully demanded in manner aforesaid, to move the Court for a rule for such tenant or person to shew cause, within a time to be fixed by the Court, on a consideration of the situation of the premises, why such tenant or person, upon being admitted defendant, beside entering into the common rule, and giving the common undertaking, should not undertake, in case a verdict shall pass for the plaintiff, to give the plaintiff a judgment, to be entered up against the real defendant, of the term next preceding the trial, or if the action shall be brought in Wales, or in the counties palatine, then of the session, assizes, or court-day, (as the case may be,) at which the trial shall be had, and also why he should not enter into recognizance, by himself and two sufficient sureties, in a reasonable sum, conditioned to pay the costs and damages which shall be recovered by the plaintiff in the action; and it shall be lawful for the Court, upon cause shewn, or upon affidavit of the service of the rule in case no cause shall be shewn, to make the rule absolute, either in the whole or in part; and to order such tenant or person, within a time to be fixed, upon a consideration of all the circumstances, to give such undertakings, and to find such bail, with such conditions and in such manner as shall be specified in the said rule, or such part of the same so made absolute; and in case the party shall neglect or refuse so to do, and shall lay no ground to induce the Court to enlarge the time for obeying the same, then, upon affidavit of the service of such order, an absolute rule shall be made for entering up judgment for the plaintiff.

By sec. 2, it is provided, that when it shall appear, on the trial of any ejectment at the suit of a landlord against a tenant, that such tenant or his attorney hath been served with due notice of trial, the plaintiff shall not be nonsuited for default of the defendant's appearance, or of confession of lease, entry, and ouster, but the production

of the consent rule and undertaking of the defendant shall, in all such cases, be sufficient evidence of lease, entry, and ouster; and the judge shall, whether the defendant shall appear upon such trial or not, permit the plaintiff on the trial, after proof of his right to recover possession, to go into evidence of the mesne profits which shall or might have accrued from the day of the expiration of the tenant's interest, down to the time of the verdict given in the cause, or to some preceding day, to be specially mentioned therein; and the jury, finding for the plaintiff, shall in such case give their verdict upon the whole matter, both as to the recovery of the whole or any part of the premises, and also as to the amount of the damages to be paid for mesne profits. But nothing herein shall be construed to bar any such landlord from bringing an action of trespass for the mesne profits which shall accrue from the verdict, or the day so specified therein, down to the day of the delivery of possession of the premises recovered in the ejectment.

And by sec. 3, in all cases in which such undertaking shall have been given, and security found, if, upon the trial, the verdict shall pass for the plaintiff, but it shall appear to the judge that the finding of the jury was contrary to evidence, or that the damages given were excessive, it shall be lawful for the judge to order the execution of the judgment to be stayed till the fifth day of the term next following, or till the next session, assizes, or court-day, (as the case may be); which order the judge shall make, upon the requisition of the defendant, in case he shall forthwith undertake to find, and on condition that within four days from the day of the trial he shall actually find security, by the recognizance of himself and two sufficient sureties, in such reasonable sum as the judge shall direct, conditioned not to commit any waste, or act in the nature of waste, or other wilful damage, and not to sell or carry off any standing crops, hay, straw, or manure produced or made (if any) upon the premises, and which may happen to be thereupon, from the day on which the verdict shall have been given to the day on which execution shall finally be made upon the judgment, or the same be set aside, as the case may be. But the recognizance last mentioned shall immediately stand discharged and be of no effect, in case a writ of error shall be brought upon such judgment, and the plaintiff in such writ shall become bound with two sufficient sureties unto the defendant in the same, in such sum and with such condition as may be

conformable to the provisions made for staying execution on bringing writs of error upon judgments in actions of ejectment, by 16 & 17 Car. II. c. 8, and 17 & 18 Car. II. c. 12, (Irish.)

By sec. 4, it is provided, that all recognizances and securities entered into pursuant to this Act shall be taken in such manner, and before such persons, as are provided in respect of recognizances of bail; and the officer of the Court with whom recognizances of bail are filed, shall file such recognizances; for which respectively the sum of two shillings and sixpence, and no more, shall be paid. But no action or other proceeding shall be commenced upon any such recognizance or security after the expiration of six months from the time when possession of the premises, or any part thereof, shall actually have been delivered to the landlord.

The 5th section provides, that it shall not be lawful for the defendant to remove any action of ejectment commenced by a landlord under the provisions of this Act from any of the Courts of Great Session in Wales to be tried in an English county, unless such Court of Great Session shall be of opinion that the same ought to be so removed, upon special application to the Court for that purpose.

And by sec. 6, it is provided, that in all cases wherein the landlord shall elect to proceed in ejectment under the provisions herein-before contained, and the tenant shall have found bail as ordered by the Court, then if the landlord, upon the trial of the cause, shall be nonsuited, or a verdict pass against him, upon the merits of the case, there shall be judgment against him with double costs.

NOTICES TO QUIT.

As in many cases *notices to quit* must precede an action by ejectment, we shall here introduce the proceedings by notice, as a preliminary to the process by ejectment.

Where lands, houses, or tenements, are held without any determinate time being fixed as to duration, they are considered as tenancies from year to year, and are not determinable at the will of either landlord or tenant, without a regular notice to quit from the party wishing to dissolve the tenancy.

As this sort of tenancy is that by which a very considerable portion of lands and houses, &c. are held, and as it can only be dissolved by a regular notice to quit, it becomes therefore important to consider the subject with

care and attention; for it is not to be denied, that there is no branch of the Law of Landlord and Tenant more necessary to be known and understood than this. We shall, therefore, consider—

1. In what cases notice to quit is necessary, and in what not.
2. By whom and to whom notice must be given.
3. The time, place, and manner of giving notice.
4. What shall be a waiver of notice.
5. The legal consequences of holding over, after notice to quit.

1. *In what cases notice is necessary, and in what not.*— As a general rule, notice to quit is only necessary where the duration of the estate is *not fixed to any particular time*, but held at the pleasure of the parties, or on some other uncertain event; as, tenant for the life of another, tenant from year to year, or for a less term than a year; but even a tenancy at will or sufferance, under particular circumstances, will require a regular notice to quit; and a general occupancy of an estate, without stipulation as to time, is considered a tenancy from year to year, and can only be determined by a regular notice to quit; but no notice to quit is necessary where the premises are held for a time certain; as, where a lease expires by efflux of time, the tenancy is thereby absolutely determined.

Where a tenant has done any act which amounts to a renunciation of his tenancy, as attorning to a stranger, or controverting his landlord's title, he may be ejected without notice, as may his executor in case of his decease, because he has himself determined his estate; and if a tenant put his landlord at defiance, the latter may consider him as a trespasser; in which case no notice to quit need be given before ejectment brought.

Where a tenant is in possession under a void lease (which, in fact, is no lease at all), he may be ejected without notice; but if the landlord accepts rent, he thereby acknowledges the tenancy, and must give a regular notice.

After forfeiture, the mortgagee may eject mortgagor without notice; and the under-lessees of a mortgagor may be ejected without notice, if they have been let into possession by the mortgagor subsequent to the mortgage.—But where a mortgagee encourages an occupier to lay out money on the premises, or acts otherwise fraudulently, an implied tenancy will be raised, and notice to quit must be given.

Where a tenancy is determined by efflux of time, or by any other contingent event, and he in reversion or remainder *receive rent* from the tenant, this will create a new tenancy from year to year, and of course will require a regular notice to quit, before ejectment can be brought; but where a person occupies under an agreement for a lease with understood covenants, if he refuse to execute such lease when tendered, he may be ejected without any previous notice.

Although, by the particular import of the words, in the case of *tenants at will and tenants at sufferance*, no notice would seem to be required; yet the law is so tender, where the right of property or the convenience of individuals is concerned, that the Courts never fail, where they can construe things favourably, to do so; and although by the 29 Car. II. c. 3, sec. 1, 2, parole leases for a longer period than three years shall have only the force of estates at will, yet it has been held, that if the lessor *do any act whatever to acknowledge the tenant*, he cannot be ejected without a regular notice to quit; but if the party granting such lease do no act to acknowledge the tenant, it will be considered no lease at all, and a notice to quit will be unnecessary.

Where there was a demise or lease from year to year, this was held to be a tenancy for two years, and under it the tenant was entitled to notice to quit; and this notice could only effect him at the end of the second year; and the same on a demise for a year, and afterwards from year to year.

A lease or agreement for twelve months, and six months' notice, will be determined by a notice at the end of the twelve months.

Where crops arrive at perfection once only in two years, the tenancy is construed, not for one year, but for two years; and a notice to quit cannot be given at the end of the first or third year.

Where a tenant from year to year dies, his representative is entitled to notice to quit, in the same manner as testator or intestate. But otherwise where he takes no interest.

A demise to hold for three, six, or nine years, without any stipulation by whom or in what manner the tenancy might be determined; it was held to be determinable at the two earlier periods at the option of the tenant only, and by a regular notice to quit.

Persons taking lodgings for any *indeterminate* period

cannot be amoved without regular notice; but if the period of taking be *determinate*, no notice is required. 1 *H. Bl.* 97.

2. *By whom and to whom the notice must be given.*—The notice must be given either by the party to whom the property belongs, or by his agent properly authorised; and it has been held in *Doe* v. *Biggs*, 1 *Taunt.* 367, that a wife living separate from her husband, and receiving rents coming to her after such separation, notice to quit must be given by him.

A receiver to an estate appointed by the High Court of Chancery is authorised to give notice to quit.

In *Right* v. *Cuthell*, 5 *East*, 491, the Court determined, that where there are several parties interested, they must all join in a notice to quit; and unless this is done, no subsequent act on the part of any one dissenting will cure the defect; even though the notice be signed by A and B, on behalf of themselves and C. But where many joint tenants concur in a demise, so many as give notice to quit may recover their several shares, on counts stating their several demises.

Where a steward of a corporation gave a parole notice to quit, this was held sufficient, without further proof of his acting under the seal of the corporation.

If A let houses or lands to B, and B underlet, the notice to quit must be served on B, and not on the undertenants; and B will be liable, although he gave the undertenants notice, and although he give up such part or parts of the premises as he himself occupies.

Where there are joint tenants, notice to all, addressed to one, is good.

3. *The time, place, and manner of giving notice.*—In all cases where an estate is determined by the will of either party, the tenant cannot be ejected without half a year's notice; and such notice, in cases of tenancies from year to year, must generally expire at the same time of the year as that on which the tenancy commenced. For example, if a demise be from Midsummer to Midsummer, the notice to quit must be given at Christmas; and it must be expressed *half a year's* notice, for *six* months' notice will not do.

At a meeting of eleven of the judges (among whom were Lord Mansfield and Lord Chief Justice De Grey), a conference was had, on the motion of Mr. Justice Gould, what notice was necessary to be given to a lessee at will to quit possession, before a lessor at will could have the

title to bring an ejectment, and recover possession; and it was their unanimous opinion, that in all cases of leases at will of farms of land to hold from year to year, and so for as long time as both parties shall please, that before the landlord can have title to bring ejectment against the tenant at will, he must give the tenant half a year's notice to quit possession of the farm. And they held the like law as to houses let at will, unless there be some usage or custom, in the place or district where the house is situate, to give a shorter or other kind of notice to quit.

Where the commencement of the tenancy cannot be otherwise fixed, it will be held to commence from the time when the tenant actually enters.

If a lease commence at Lady-day, and terminate at Michaelmas, a tenancy from year to year, created by the landlord's acceptance of rent after the determination of the lease, will be held to commence at Michaelmas.

Where a tenant who held over after the expiration of the lease, and who had been a yearly tenant before the lease, and the expiration of the prior tenancy was at a time different from that of the tenancy under the lease, he was considered as holding on according to the tenancy created by the lease.

The time for notice to quit is sometimes guided by the custom of particular places. By the custom of London, a tenant under the yearly rent of 40*s*. is only entitled to a quarter's notice, and paying above 40*s*. shall have half a year's notice.

A yearly tenant must have half a year's notice to quit, expiring on the same day of the year as his tenancy commenced.

Notice to quit has in all cases a reference to the letting; as, where a house was taken by the month, it was held that a month's notice was good.

Whether the property consists in houses or lands, it makes no difference with regard to notice.

Where a tenant takes a farm, and enters upon different parts of it at different periods of time, a notice to quit must be given with reference to his entry on the most substantial part of it, and he must quit the other parts at the respective periods he would be obliged to, had he received regular notice to quit them. For example, suppose A holds arable land from the 14th of March, pasture land from the 20th of April, and meadow land from the 16th of May, at a yearly rent payable at Michaelmas and Lady-day, the

first payment to be made at Michaelmas; this was held to be a tenancy from Michaelmas to Lady-day; and notice to quit at Lady-day, delivered before Michaelmas-day, was held good.

Where a tenant was to enter on arable land at Candlemas, on house and other premises at Lady-day; it was held, that six months' notice previous to Lady-day was sufficient.

Where a lease was to commence, as to meadow, from the 25th of December; pasture, from the 25th of March; house, mill, and the other premises, from the 1st of May; the rent to be payable at Pentecost and Martinmas; the tenancy of the whole was held to commence from the 1st of May.

Where land was let from the 2d of February; house and other premises, from the 1st of May; rent to be paid at Michaelmas and Lady-day; on trial, the jury found the land to be the principal subject of demise. 11 *East*, 498.

Where a landlord is ignorant of the time of the commencement of his tenant's tenancy, and the *tenant supplies him with that information*, although it should turn out to be *wrong*, the tenant cannot avail himself of the mistake, but the notice will stand good; and it has been ruled, that where, from ignorance as to the commencement of the tenancy, notice has been given at the wrong time, it is incumbent on the party receiving such notice to *inform* the other party of the irregularity, or otherwise it will stand good.

A notice to quit on any particular day is no evidence of a holding from that day.; except where, a notice being personally served and read and explained to the tenant, he does not object to the notice; and assenting to the terms of the notice will waive any irregularity as to the time of its expiration; but care should be taken that such assent be strictly proved. 4 *T. R.* 361.

Where the landlord cannot discover the day when the tenant entered, the best notice is, to quit at the end of the current year of your tenancy, which shall expire next after the end of one half year from the date of the notice.

Notice was given to a tenant to quit at the expiration of his current year; ejectment was brought on the January following, and the demise laid on the 1st of November; on being served with the declaration, the tenant made no objection to the notice, but said he should quit as soon as he could suit himself with another house; it was

held to be a *primâ facie* evidence of a holding from Michaelmas.

Where A entered in the middle of a quarter, and paid rent for the fraction to the next quarter-day, the tenancy is held to be from such quarter-day, and the notice to quit is to be regulated accordingly.

In a letting from year to year, to quit at a quarter's notice, the quarter must expire with the current year of the tenancy.

Where A received three months' notice to quit, and was entitled to six, but made no objection, such notice was held good.

In all cases where the parties agree to give a longer or shorter notice to quit than is required by law, such notice must expire at the period of the year when the tenancy commenced, unless it is otherwise expressed by the agreement; but where a demise is for one year only, and then to continue tenant and to quit at a quarter's notice, the notice may expire at the end of any quarter.

Where the tenancy is for a less period than a year, as is usually the case with lodgers, the custom is, that the time for notice to quit shall be the same as the time for which the lodgings were taken, viz. a week's notice for a week's taking, a month for a month, and so on.

4. *What amounts to a waiver of notice to quit.*—Where the landlord accepts rent *after* the expiration of the notice to quit, it will be a waiver of such notice, and, before ejectment can be brought, fresh notice must be given; but in an action of ejectment, after appearance, where the landlord received rent after the expiration of notice to quit, but continued his action, this was held not to waive his notice.

A notice will be waived where the landlord distrains for rent, or brings an action for use and occupation after the expiration of notice to quit. 1 *H. Bl.* 311.

What appears the governing principle in all these cases is, that, by the acceptance of rent, and the continuation of the tenancy after notice, the landlord is presumed to have waived his notice; unless it can be proved, from collateral circumstances, that such acceptance of rent arose from other motives.

5. *The legal consequences of holding over, after notice to quit.*—As to the consequences of holding over after the notice to quit has expired, the landlord may bring an action of ejectment to recover possession, and the tenant will render himself liable to double rent by the 4 Geo. II.

c. 28, and the 11 Geo. II. c. 19, which enacts, "That in case any tenant or tenants for any term of life, lives, or years, or other person or persons, who are or shall come into possession of any lands, tenements, or hereditaments, by, from, or under, or by collusion with such tenant or tenants, shall wilfully hold over any lands, tenements, or hereditaments, after the determination of such term or terms, and after demand made, and notice in writing given for delivering the possession thereof, by his or their landlords or lessors, or the person or persons to whom the remainder or reversion of such lands, tenements, or hereditaments shall belong, his or their agent or agents thereunto lawfully authorised; then and in such case such person or persons so holding over shall, for and during the time he, she, and they shall so hold over or keep the person or persons entitled out of possession of the said lands, tenements, and hereditaments as aforesaid, pay to the person or persons so kept out of possession, their executors, administrators, or assigns, at the rate of *double the yearly value* of the lands, tenements, and hereditaments, so detained, for so long time as the same are detained, to be recovered in any of his majesty's Courts of Record by action of debt, whereunto the defendant or defendants shall be obliged to give special bail; against the recovering of which said penalty there shall be no relief in equity."

But a tenant for a less term than a year does not come under the operation of the act, which expressly mentions a tenant for any term of life, lives, or years; and as the act mentions a *wilful* holding over, a tenant who holds over under a fair claim of right, will not come under its meaning, though it may eventually turn out that he had no right. To entitle the landlord to double value, demand must be made, and notice in writing given to deliver up possession; but it has been decided, that a notice in writing to quit includes the demand, though it is better to make it.

The demand may be made either before or after the expiration of the lease; but the tenant can only be charged double value from the time of serving the notice; and if the notice be given before the lease has run out, the double value will commence from the termination of the lease.

Where notice has been served upon a *feme sole*, and she afterwards marries, a fresh notice is not necessary to be given to the husband.

A landlord does not lose his right of double value by bringing ejectment, and the tenant will be liable for the

time between the expiration of the notice, and the time when possession was recovered by the landlord; but it is to be observed, that if the landlord accepts simple rent, he waives his right to double rent.

With respect to tenants holding over after having given notice to quit, the 11 Geo. II. c. 19, sec. 18, after reciting "great inconveniences have happened, and may happen to landlords whose tenants have power to determine their leases *by giving notice to quit* the premises by them holden, and yet *refusing to deliver up the possession* when the landlord hath agreed with another tenant for the same," enacts, "That in case any tenant or tenants shall give notice of his, her, or their intention to quit the premises by him, her, or them holden at a time mentioned in such notice, and shall not accordingly deliver up the possession thereof at the time in such notice contained, then the said tenant or tenants, his, her, or their executors or administrators, shall from thenceforward pay to the landlord or landlords, lessor or lessors, double the rent or sum which he, she, or they should otherwise have paid; to be levied, sued for, and recovered, at the same times and in the same manner as the single rent or sum before the giving such notice could be levied, sued for, or recovered; and such double rent or sum shall continue to be paid during all the time such tenant or tenants shall continue in possession as aforesaid."

A tenant for a year under a parol demise comes within the meaning of the statute; and it is not necessary that the notice given by the tenant should be in writing; a parol notice will be sufficient to make him liable; but it has been held, that a *contingent notice* will *not* make the tenant liable; as where a tenant gave this notice, that he would quit *as soon as he got another situation*, and he afterwards got another, but refused to quit; it was held by Ellenborough, C. J. that the notice was too vague, and did not come within the meaning of the statute.

FORMS OF NOTICES TO QUIT.

Notices, of course, will vary according to circumstances, and it would be impossible to suit forms to every case which may occur: but parties may recur to them as standards to guide them on the general principle, and adapt them to such cases as may happen.

The Landlord to the Tenant.

To Mr.

I hereby give you notice to quit and deliver up, on the

day of next, the possession of [*here mention the premises*], with the appurtenances, which you now hold of me, situate in [*here describe where the premises are situated*].

Dated the day of 1833.

Yours &c.

If you are in doubt who is the tenant, the notice will be good if directed to the supposed tenant, "and to whom else it may concern."]

The Agent for the Landlord to the Tenant.

Mr.

I hereby, as the agent authorised by your landlord give you notice to quit and deliver up, &c. [*following the preceding form.*]

Dated, &c. Yours, &c.

Agent.

When the Commencement of the Tenancy is uncertain, the following Form may be used.

Mr.

I hereby give you notice to quit and deliver up, on the day of next, the possession of [*here mention the premises*], with the appurtenances, which you hold of me, situate [*here describe the situation of the premises*], provided your tenancy commenced at that time of the year; or otherwise, that you quit at the end of the year of your tenancy which shall expire next after the end of the half year from the time of this notice.

Landlord to Tenant, to quit Lodgings.

Mr.

I hereby give you notice to quit and deliver up, on or before next, the rooms or apartments, &c. which you hold of me.

Witness my hand, the day of in the year [*Sign here.*]

Notice from Landlord to Tenant either to quit the Farm and Premises, or pay Double Rent.

Sir,

I hereby give you notice to quit and deliver up, on or before the 5th day of January next, the house, farm, lands, and tenements, which you now hold of me, situate in Islington, in the county of Middlesex; in default whereof I shall require for the same the net yearly rent of

one hundred pounds, (being double the present yearly rent thereof,) for such time as you shall thereafter continue possession. Dated this 4th day of October, 1833.

THOS. BENJ. BROADHEAD,

To Mr. George Elliott. *Landlord of the said Premises.*

Another, from the Landlord's Agent to the Tenant.

Sir,

I hereby demand of you, and give you notice, that you are to deliver up the possession of the house, with the appurtenances, in the parish of in the county of now in your occupation, to Mr. A. B. your landlord, at Lady-day next ensuing the date hereof; and, in default of your compliance therewith, the said A. B. doth and will insist upon your paying unto him from thenceforward, for the same, the yearly rent or sum of pounds, being double the former rent or value thereof, for so long time as you shall detain the key, and keep possession of the said premises over the said notice. Given under my hand, this day of in the year of our Lord, 1833.

N. M. *Agent to the said Mr. A. B. legally authorised.*

To Mr. F. G. the Tenant.

Notice from Landlord to quit House and Premises

Sir,

I hereby give you notice to quit the house and premises you now hold of me, situate No. 27, Holborn, on Michaelmas-day next. Dated this 1st day of July, one thousand eight hundred and thirty-three

Yours,

To. Mr. ROGER COOKE.

Notice from a Landlord to quit Apartments.

Sir,

I hereby give you notice, that on the twenty-fifth day of December next, you are to quit and deliver up the apartments and other tenements you now hold of me in this house.

Witness my hand this nineteenth day of September, one thousand eight hundred and thirty-three.

To Mr. ABEL SIMONS.

Notice to Repair—Landlord to Tenant.

Mr.

I hereby give you notice to put in good and tenantable repair, within three months from the date hereof, all and every part of the messuage or tenement and premises in your occupation, situate at, &c. particularly [*here describe the parts that require repairing.*]

Witness my hand, this day of

To E. N. [*Tenant.*] [*Landlord*]

Landlord to Tenant to pay Rent, in default of which he will incur Forfeiture of Lease, &c.

Mr.

I hereby give you notice, that unless you pay, or cause to be paid unto me, on or before the day of next, the sum of being half a year's rent due on the 29th day of September, for the premises which you now hold of me, at the yearly rent of £50, I shall claim such forfeiture of lease, &c. as I may be by law entitled to.

Witness my hand, this [*Here sign.*]

PROCESS IN ACTIONS OF EJECTMENT.

In case of vacant Possession.

It is not *always* necessary in cases of vacant possession to proceed by *ejectment;* for when the premises are *wholly unoccupied*, the claimant would be justified in entering and taking possession of them, without bringing an ejectment, if he could find an opportunity of doing so, *without using force;* for which purpose it might be proper, if there is likely to be any resistance, to call in the aid of a peace officer; and if an action of *trespass* were afterwards brought against the claimant, he might *justify* the entry under his title: but an action of ejectment cannot be maintained, as on a vacant possession, where there is any thing left by the tenant upon the premises, as beer in a cellar, or hay in a barn; and in the case of ground, on which there is no house or building, the landlord cannot proceed against the tenant as upon a *vacant* possession, if it be known where the tenant lives.

The method of proceeding by ejectment on a vacant possession is as follows.

Prepare a lease of years according to the following form:—

This Indenture, made the day of [&c.] between A. B. of of the one part, and E. F. of of the other part, witnesseth, that the said A. B. for and in consideration of the sum of five shillings of lawful money of Great Britain, to him in hand paid by the said E. F. at or before the sealing and delivery of these presents, the receipt whereof the said A. B. doth hereby acknowledge, hath demised, granted, and to farm let, and by these presents doth demise, grant, and to farm let unto the said E. F., his executors and administrators, all that messuage, [&c.] situate and being in the parish of in the county of late in the tenure and occupation of but now untenanted; to have and to hold the same unto the said E. F., his executors and administrators, from the day of last past, before the date hereof, for and during and unto the full end and term of years, from thence next ensuing, and fully to be complete and ended; yielding and paying therefore yearly and every year, during the said term, unto the said A. B. or his assigns, the rent of one pepper-corn, if lawfully demanded at the feast of : Provided always, and these presents are on this condition, that if the said A. B. or his assigns shall at any time or times hereafter, tender or cause to be tendered, unto the said E. F., his executors or administrators, the sum of sixpence, that then and in such case, and from thenceforth, this present indenture, and every thing herein contained, shall cease, determine, and be absolutely void, any thing herein contained to the contrary thereof in anywise notwithstanding. In witness whereof, the parties hereto have interchangeably set their hands and seals, the day and year first abovewritten.

Sealed and delivered, as the act and deed of the above-named A. B. by C. D. of , by virtue of a letter of attorney* to him for that purpose made by the said A. B., bearing date, [&c.] being first duly stamped, in the presence of, } A. B. E. F.

J. K.

* Where the landlord enters himself, this latter part must be omitted, and the words will run thus: "Sealed and delivered by the above-named A. B., being first duly stamped in the presence of J. K."

Then, where necessary, prepare a power of attorney, according to the following form:

Know all men by these presents, that I A.B. of have made, ordained, constituted, and appointed, and by these presents do make, ordain, constitute, and appoint C. D. of , my true and lawful attorney, for me, and in my name, to enter into and take possession of a certain messuage, [&c.] late in the tenure and occupation of , situate and being in the parish of in the county of , but now untenanted; and after the said C. D. hath taken possession thereof, for me, and in my name, and as my act and deed, to sign seal and execute a lease of the said premises, with the appurtenances, unto E. F. of , to hold the same to him the said E. F., his executors, administrators, and assigns, from the day of last past, before the date hereof, for the term of years, at the yearly rent of a peppercorn, if lawfully demanded; subject to a proviso, for making void the same, on tendering the sum of sixpence to the said E. F., his executors or administrators. In witness, [&c.]

Sealed and delivered, [&c.]

To which it will be requisite to attach an affidavit of the execution of the warrant of attorney, according to the following form:—

I. K. of , gentleman, maketh oath and saith, that he was present and did see A. B. of . named in the letter of attorney hereunto annexed, duly sign seal and deliver the said letter of attorney.

Sworn, [&c.] I. K.

This done, the party claiming title, or his attorney, (as the case may be,) must enter upon the premises, before the essoign day of the term, and there seal and deliver the lease to the lessee, who is usually *some friend*, and at the same time deliver him the possession.* The lease being thus executed, and possession given,† the lessee continues on the premises, until some person by agreement enters

* No attorney can be lessee in ejectment.

† If the premises be a house merely, and the door be locked, in such a case, getting upon the threshold of the door, and putting the finger in the keyhole, will be a sufficient entry, if none better can be made without force

thereon and turns him out of possession; upon which, a copy of a declaration in ejectment, which has been previously prepared, is delivered to the ejector, or person who turns the lessee out. This declaration is founded upon the demise contained in the lease, and must be framed in the following manner:—

In the King's Bench, }
(or Common Pleas.) }

——— Term, in the year of the reign of King William the Fourth.

———To wit.) Richard Roe, late of yeoman, was attached to answer John Doe, of a plea wherefore the said Richard Roe, with force and arms, &c. entered into messuages,* barns, stables, outhouses, yards, gardens, orchards, acres of arable land, acres of meadow land, and acres of pasture land, with the appurtenances, being in the parish of in the county of , which A. B. had demised to the said John Doe, for a term which is not yet expired, and ejected him from his said farm; and other wrongs to the said John Doe there did, to the great damage of the said John Doe, and against the peace of our Lord the now King, [&c.] And thereupon the said John Doe, by his attorney, complains; that whereas the said A. B., on the day of in the year of the reign of our said Lord the King, at the parish aforesaid, in the county aforesaid, had demised the said tenements, with the appurtenances, to the said John Doe; to have and to hold the same to the said John Doe and his assigns, from the day of then last past, for and during and unto the full end and term of years from then next ensuing, and fully to be complete and ended: By virtue of which said demise, the said John Doe entered into the said tenements, with the appurtenances, and became and was thereof possessed, for the said term so to him thereof granted: And the said John Doe being so thereof possessed, the said Richard Roe afterwards, to wit, on the day of in the year aforesaid, with force and arms, [&c.] entered into the said tenements, with the appurtenances, which the

* Care must be taken to give the full number of messuages, &c. claimed; and, to secure this, it is usual to say, "*ten* messuages, *ten* barns, *ten* stables," &c. for, by stating more, you are entitled to all you can prove of them

said A. B. had demised to the said John Doe, in manner and for the term aforesaid, which is not yet expired, and ejected the said John Doe from his said farm; and other wrongs to the said John Doe then and there did, to the great damage of the said John Doe, and against the peace of our said Lord the now King: Wherefore, the said John Doe saith, that he is injured, and hath sustained damage to the value of £ and therefore he brings his suit, [&c.]

And, at the bottom, add:—

Take notice, that unless you appear in His Majesty's Court of King's Bench [*or Common Pleas*] at Westminster, within the first *four* days [*or, if in the country*, within the first *eight* days], of next Term, at the suit of the above-named plaintiff and plead to this declaration in ejectment, judgment will be thereupon entered against you by default.

Yours, &c.
A. B. plaintiff,
or,
C. D. plaintiff's attorney

To Mr.

An *affidavit* of the *service* of the declaration must be regularly made by the person who served it, if the proceedings are in the King's Bench; but if they are in the Court of Common Pleas, it may be made by any person who was present, and *saw* the declaration served, and *heard* it explained. The following is a form of the affidavit:—

In the King's Bench.

Between { John Doe, on the demise of A. B. plaintiff, and Richard Roe, defendant.

I. K. of gentleman, maketh oath, that he did on the day of last, (*or instant*,) personally serve C. D. tenant in possession of the premises in the declaration of ejectment hereunto annexed mentioned, or [*if he be not tenant of the whole*,] some part thereof, with a true copy of the said declaration, and of the notice thereunder written, hereunto annexed; and this deponent at the same time read over the said notice to the said C. D. and explained to him the intent and meaning of such service, [*or generally thus:* "and this deponent at

the same time acquainted the said C. D. of the intent and meaning of the said declaration and notice."]

Sworn, [&c.] I. K.

In this action of ejectment upon a vacant possession, no person claiming a title can be let in to defend; but he that can *first* seal a lease upon the premises must obtain the possession; and other persons having any claim or title to them must have recourse to their action. Consequently, after the proceedings above described, the lessor of the plaintiff may immediately proceed to judgment against the casual ejector. For this purpose an affidavit of the entry, lease, and ouster, and of the service of the declaration and notice, must be prepared in the following form:—

In the King's Bench, &c.

John Doe, on the demise of A. B. plaintiff,
and
Richard Roe, defendant.

A. B. of the lessor of the plaintiff in this cause, and I. K. of gentleman, severally make oath and say: and first this deponent, I. K. for himself saith, that he did, on the day of last, affix a copy of the declaration in ejectment hereunto annexed, and the notice thereunder written, upon the door of the messuage in the said declaration mentioned, [*or, in case the ejectment is not for the recovery of a messuage,* "upon being a notorious place in the lands, tenements, or hereditaments, comprised in the said declaration in ejectment,"] there being no tenant then in the actual possession thereof; and this deponent, A. B. for himself saith, that before such copy of the said declaration in ejectment was affixed as aforesaid, there was due to him, this deponent, as landlord of the said messuage, [*or,* "lands, tenements, or hereditaments,"] with the appurtenances, from C. D. the tenant thereof, the sum of £ , for half a year's rent, upon and by virtue of a certain indenture of lease, bearing date the day of 18 , and made between this deponent of the one part, and the said C. D. of the other part; and that no sufficient distress was then to be found on the said messuage, [*or,* "lands, tenements, or hereditaments,"] with the appurtenances, countervailing the arrears of rent then due to this deponent; and this deponent further saith, that at the time of affixing the copy of the said declaration in ejectment as aforesaid, he had the power to

re-enter the said messuage, [or, "lands, tenements, or hereditaments,"] with the appurtenances, by virtue of the said lease, for the nonpayment of the rent so in arrear as aforesaid.

Sworn in Court, [*or, if the Court be not mentioned in the top of the affidavit,* "in the Court of King's Bench, Common Pleas, or Exchequer,"] at Westminster Hall, the day of 18 } (Signed) A. B. I. K.

By the Court.*

This affidavit must be on a 2s. 6d. stamp, and be then annexed to the letter of attorney, with the lease, and a copy of the declaration and notice. Indorse it on the back, "*To move for judgment against the casual ejector;*" then get it signed by counsel, and draw up the rule in the following form:

Doe, on the demise of A. B. }
Roe .... } Unless some person claiming title to the premises in question shall appear and plead to issue on next after , [*four days after granting the rule, in town causes; or, in country causes, four days after the end of the term,*] let judgment be entered for the plaintiff against the new defendant Roe, by default. Upon the motion of Mr.

By the Court.

A rule for judgment having been thus obtained against the casual ejector, the tenant in possession, or his landlord, either *appears*, and enters into the consent rule, to be made defendant, instead of the casual ejector, and to confess lease, entry, and ouster, &c. or confesses the action, or makes *default*. In the latter case, the plaintiff, or his attorney, having ascertained the fact, by searching the ejectment books at the Judges' chambers in the King's Bench, and the plea book at the prothonotaries' office in the Common Pleas, may sign judgment against the casual ejector, and it is not necessary for him to give a rule to plead before judgment is signed; but common bail must first be filed for the casual ejector, in the King's Bench,

* If sworn in the country, it must be done before a commissioner; and persons who transact the business for themselves had better let the form of the jurat, beginning "Sworn," &c. be written by the commissioner, or clerk, in Court, who administers the oath, in order that it may be correct.

by *bill*, though it is not necessary to enter an appearance for him, by *original*, either in that Court, or in the Common Pleas. The judgment, however, must not be signed until the afternoon of *the day next after that on which the rule expires*, and if *Sunday* happens to be the last day, it cannot be signed till the afternoon of *Tuesday*.

PROCEEDINGS IN EJECTMENT, WHERE THE TENANT IS IN POSSESSION.

When the tenant is in possession of the premises, the *declaration*, the form of which is given in page 165, varies by leaving out the concluding paragraph beginning "Take notice," in page 166; and the following notice to appear must be substituted in its stead:

Mr. C. D.

I am informed that you are in possession of, or claim title to, the premises in this declaration of ejectment mentioned, or some part thereof; and I, being sued in this action as a casual ejector only, and having no claim or title to the same, do advise you to appear in next Term, [*or*, in London or Middlesex, "on the first day of next Term,"] in his Majesty's Court of King's Bench, wheresoever his said Majesty shall then be in England, [*or*, in the Common Pleas, "in his Majesty's Court of Common Bench at Westminster,"] by some attorney of that Court; and then and there, by rule of the same Court, to cause yourself to be made defendant in my stead; otherwise I shall suffer judgment therein to be entered against me by default, and you will be turned out of possession.

Yours, &c.

Richard Roe.

The forms of declarations also vary according to the circumstances, and the Courts in which the proceedings are taken. The one we have given is a declaration by *original*, on a single demise, as it is called, in the King's Bench or Common Pleas, with the notice to appear thereto. This form is varied in case of a double demise, with one, or two, ousters; in which it is requisite to set out the particulars according to the following forms:

Declaration by Original on a double Demise, with One Ouster.

In the King's Bench, }
(or Common Pleas.) }

—— Term, [&c.]

——— (To wit.) Richard Roe, late of yeoman,

was attached to answer John Doe, of a plea wherefore the said Richard Roe, with force and arms, &c. entered into messuages, [&c.] with the appurtenances, situate and being in the parish of , in the county of , which A. B. had demised to the said John Doe, for a term which is not yet expired: And also wherefore the said Richard Roe, with force and arms, &c. entered into other messuages, [&c.] with the appurtenances, situate and being in the parish aforesaid, in the county aforesaid, which E. F. had demised to the said John Doe, for a term which is not yet expired, and ejected him from his said several farms; and other wrongs, [&c.]: And thereupon, [&c.] that whereas the said A. B. on the day of in the year of the reign of our said Lord the King, at the parish aforesaid, in the county aforesaid, had demised the said tenements first above-mentioned, with the appurtenances, to the said John Doe; to have and to hold the same to the said John Doe and his assigns, from the day of then last past, for and during and unto the full end and term of years from thence next ensuing, and fully to be complete and ended: And also that whereas the said E. F. on the said day of in the year aforesaid, at the parish aforesaid, in the county aforesaid, had demised the said tenements secondly above-mentioned with the appurtenances, to the said John Doe; to have and to hold the same to the said John Doe and his assigns, from the said day of then last past, for and during and unto the full end and term of years from thence next ensuing, and fully to be complete and ended: By virtue of which said several demises, the said John Doe entered into the said several tenements first and secondly above-mentioned, with the appurtenances, and became and was thereof possessed, for the said several terms so to him thereof respectively granted: And the said John Doe being so thereof possessed, the said Richard Roe afterwards, to wit, on the day of in the year aforesaid, with force and arms, &c. entered into the said several tenements first and secondly above-mentioned, with the appurtenances, which the said A. B. and E. F. had respectively demised to the said John Doe, in manner and for the several terms aforesaid, which are not yet expired, and ejected the said John Doe from his said several farms; and other wrongs, &c. [*as before, with the like notice to appear.*]

Declaration by Original on a double Demise, with Two Ousters.

In the King's Bench, }
(or Common Pleas.) }

—— Term, [&c.]

——— (to wit.) Richard Roe, late of yeoman, was attached to answer John Doe, of a plea wherefore the said Richard Roe, with force and arms, &c. entered into messuages, [&c.] with the appurtenances, situate and being in the parish of in the county of , which A. B. had demised to the said John Doe, for a term which is not yet expired, and ejected him from his said farm: And also wherefore the said Richard Roe, with force and arms, &c. entered into other messuages, [&c.] with the appurtenances, situate and being in the parish aforesaid, in the county aforesaid, which E. F. had demised to the said John Doe, for a term which is not yet expired, and ejected him from his said last-mentioned farm; and other wrongs, &c. [*as before.*] And thereupon, [&c.] that whereas the said A. B. on the day of in the year of the reign of our said Lord the King, at the parish aforesaid, in the county aforesaid, had demised the said tenements first above-mentioned, with the appurtenances, to the said John Doe; to have and to hold the same to the said John Doe and his assigns, from the day of then last past, for and during and unto the full end and term of years from thence next ensuing, and fully to be complete and ended: By virtue of which said demise, the said John Doe entered into the said tenements first above-mentioned, with the appurtenances, and became and was thereof possessed, for the said term so to him thereof granted: And the said John Doe being so thereof possessed, the said Richard Roe afterwards, to wit, on the day of in the year aforesaid, with force and arms, &c. entered into the said tenements first above-mentioned, with the appurtenances, which the said A. B. had demised to the said John Doe, in manner and for the term aforesaid, which is not yet expired, and ejected the said John Doe from his said farm: And also that whereas the said E. F. on the said day of in the year aforesaid, at the parish aforesaid, in the county aforesaid, had demised the said tenements secondly above-mentioned, with the appurtenances, to the said John Doe: to have and to hold the same to the said John Doe and his assigns, from the said day of then last past, for and

during and unto the full end and term of years from thence next ensuing, and fully to be complete and ended: By virtue of which said last-mentioned demise, the said John Doe entered into the said tenements secondly above-mentioned, with the appurtenances, and became and was thereof possessed, for the said last-mentioned term so to him thereof granted: And the said John Doe being so thereof possessed, the said Richard Roe afterwards, to wit, on the said day of in the year aforesaid, with force and arms, &c. entered into the said tenements secondly above-mentioned, with the appurtenances, which the said E. F. had demised to the said John Doe, in manner and for the term last aforesaid, which is not yet expired, and ejected the said John Doe from his said last-mentioned farm; and other wrongs, &c. [*as before, with the like notice to appear.*]

The declaration by *bill*, in the King's Bench, is as follows:

Markham and Le Blanc.

—— Term, in the year of the reign of King George the Third.

—— (to wit.) John Doe complains of Richard Roe, being in the custody of the marshal of the Marshalsea of our Lord the now King, before the King himself; for that whereas A. B. on the day of in the year of the reign of our said Lord the King, at the parish of in the county of , had demised to the said John Doe, messuages, [*&c.*] with the appurtenances, situate and being in the parish aforesaid, in the county aforesaid; to have and to hold the same to the said John Doe and his assigns, from the day of then last past, for and during and unto the full end and term of years from thence next ensuing, and fully to be complete and ended: By virtue of which said demise, the said John Doe entered into the said tenements with the appurtenances, and became and was possessed thereof, for the said term so to him thereof granted: And the said John Doe being so thereof possessed, the said Richard Roe afterwards, to wit, on the day of in the year aforesaid, with force and arms, &c. entered into the said tenements, with the appurtenances, which the said A. B. had demised to the said John Doe, in manner and for the term aforesaid, which is not yet expired, and ejected the

said John Doe from his said farm; and other wrongs to the said John Doe then and there did, against the peace of our said Lord the King, and to the damage of the said John Doe of £ , and therefore he brings his suit, &c.

Pledges to prosecute, { John Den, and Richard Fen. }

The declaration by *bill*, in the Court of Exchequer, must be in the following form:

In the Exchequer.

—— Term, [*&c.*]

——— (to wit.) John Doe, a debtor to our Sovereign Lord the now King, comes before the Barons of his Majesty's Exchequer at Westminster, on the day of [*last day of the term preceding the time of service*] in this same Term, by his attorney, and complains by bill against Richard Roe, present here in Court the same day, of a plea of trespass and ejectment of farm; for that whereas, &c. [*as in the last, concluding as follows:*] to the damage of the said John Doe of £ , whereby he is the less able to satisfy our said Lord the King, the debts which he owes to his Majesty at his said Exchequer, and therefore he brings his suit, &c.

Pledges, [*&c.*]

If there be any difficulty as to the demises, it will be prudent to get it drawn by a special pleader, as it is most essential it should be correct. The venue must be laid in the county in which the premises lie, in ordinary cases; and if laid in London or Middlesex, the notice should require the tenant's appearance on the first day in the following Term; and if in any other county, the notice must be for the next Term generally. After the draft of the declaration has been prepared, engross it, and make as many copies as there are tenants in possession of the premises in dispute, and let a copy be served on each tenant, according to the rules of service. On the *tenant himself* it may be served any where; on *the wife*, either on the *premises*, or at the *husband's house;* but in all *other* cases it must be served on the *premises*.

In some cases it happens that the service of the declaration and notice as above directed is impracticable, from the tenant's absconding, or other causes. In such cases, the service should be made in the best manner possible,

on some one of the family, or by affixing it on the premises. Then move the Court for a rule to shew cause why such service as can be made should not be deemed good service. This rule may be drawn in the following manner, in a rule to shew cause why service on the tenant's niece should not be deemed good service:

Doe, on the demise of A. B. }
Roe .... } Upon reading the affidavit of I. K. and the declaration in ejectment and notice thereto annexed; it is ordered, that C. D. the tenant in possession of the premises in question, upon notice of this rule to be given to him, shall upon, [*&c.*] shew cause, why the service of the said declaration and notice upon M. H. his niece, should not be deemed as good service of the same, as if served upon him the said C. D.: And it is further ordered, that leaving a copy of this rule at the house of the said C. D. with some person there, or, in case no person can be met with, affixing a true copy thereof on the outer door of the said house, shall be deemed good service of the said rule upon the said C. D. Upon the motion of Mr. ———.

By the Court.

Draw this rule up with the Clerk of the Rules, and serve a copy of it *in the manner* directed by the rule; and if no sufficient cause be afterwards shewn, the Court will make the rule absolute, upon an affidavit of service of such copy in the way directed.

After the declaration and notice are served, an affidavit of service must be made, the form of which is given in page 166; but where there are several tenants, the form of the affidavit must vary accordingly, as in the following example:

Affidavit of Service, where there are several Tenants.

In the King's Bench.

Between { John Doe, on the demise of A. B. plaintiff
and
Richard Roe, defendant.

I. K. of gentleman, maketh oath and saith, that he did, on the day of last, (*or*, *instant*,) personally serve C. D. [*&c.*] tenants in possession, &c. [*as in the last*], with the said declaration, and the notice thereunder written, by delivering a true copy of the said declaration and notice to each of them, the said C. D. [*&c.*]; [*and if the notice was not directed to all the tenants, say,*

"except that the said notice was directed to each of them, the said C. D. [&c.] separately;"] and this deponent at the same time read over the said notice to each of them, the said C. D. [&c.] and explained to them respectively the intent and meaning of such service: [*or generally, that*, "this deponent at the same time acquainted each of them, the said C. D. [&c.] of the intent and meaning of the said declaration and notice."]

Sworn, [&c.] I. K.

There are further forms of affidavit of service; as where the declaration was served on *one tenant*, and *the wife* of another, where the tenant himself could not be found; the concluding part, with reference to the service of the wife, being as follows:

And this deponent further saith, that he did, on the same day, also serve G. H. tenant in possession of other part (or residue) of the premises in the said declaration mentioned, with another true copy of the said declaration and notice thereunder written, by delivering the same to, and leaving it with M. H. the wife of the said G. H. at the dwelling-house of the said G. H. being parcel of the premises in the said declaration mentioned; and this deponent at the same time read over the notice thereunder written to the said M. H. and explained to her the intent and meaning of such service.

Sworn, [&c.] I. K

Where the premises are *untenanted*, the affidavit of service is made in the following form, viz.

In the King's Bench.

Between { John Doe, on the demise of A. B. plaintiff, and Richard Roe, defendant. }

A. B. of the lessor of the plaintiff in this cause, and I. K. of gentleman, severally make oath and say; and first, this deponent I. K. for himself saith, that he did, on the day of last, affix a copy of the declaration in ejectment hereto annexed, and the notice thereunder written, upon the door of the messuage in the said declaration mentioned, [*or, in case the ejectment is not for the recovery of a messuage*, "upon , being a

notorious place of the lands, tenements, and hereditaments, comprised in the said declaration in ejectment,"] there being no tenant then in the actual possession thereof. And this deponent A. B. for himself saith, that before such copy of the said declaration in ejectment was affixed as aforesaid, there was due to him this deponent, as landlord of the said messuage, [*or*, "lands, tenements, or hereditaments,"] with the appurtenances, from C. D. the tenant thereof, the sum of £ for half a year's rent, upon and by virtue of a certain indenture of lease, bearing date the day of 18 , and made between this deponent of the one part, and the said C. D. of the other part; and that no sufficient distress was then to be found upon the said messuage, [*or*, "lands, tenements, or hereditaments,"] with the appurtenances, countervailing the arrears of rent then due to this deponent: And this deponent further saith, that at the time of affixing the copy of the said declaration in ejectment as aforesaid, he had power to re-enter the said messuage, [*or*, "lands, tenements, or hereditaments,"] with the appurtenances, by virtue of the said lease, for the non-payment of the rent so in arrear as aforesaid

A. B.
Sworn, [&c.] I. K.

If the tenant upon whom the declaration and notice were served do not take steps to have himself made a party to the action, the plaintiff becomes entitled to judgment by *default* against the casual ejector, who, of course, will not appear; and the motion for this judgment must be made in the Term in which the tenant was required by the notice to appear.

In order to move for this judgment against the casual ejector, annex the affidavit of service to the declaration, and indorse on them, "*to move for judgment against the casual ejector.*" Get it signed by counsel, who will charge for it 10*s*. 6*d*.; and where the declaration has been regularly served, there needs no motion in Court; which, however, is necessary in case of any irregularity of service, the nature of which must be mentioned. Then take the motion paper to the Clerk of the Rules, and draw up the rule, which is called a rule *nisi*, for judgment, unless the tenant shall appear and plead within the time therein mentioned, as in the following example, where the judgment is for the whole premises:

—— next after , in the year of King the Fourth.

Doe, on the demise of A. B. } Unless the tenant in Roe .... } possession of [*or, if the premises are untenanted*, "Unless some person claiming title to"] the premises in question, shall appear and plead to issue, on next after , let judgment be entered for the plaintiff, against the now defendant Roe, by default. Upon the motion of Mr. ——.

By the Court.

Where the rule is for a part of the premises only, it is drawn up as follows:

Doe, on the demise of A. B. } Unless C. D. tenant Roe .... } in possession of part of the premises in question, shall appear and plead to issue, on next after , let judgment be entered for the plaintiff, against the now defendant Roe, by default: But execution shall issue for such part of the premises only as is in his possession. Upon the motion of Mr. ——.

By the Court.

Where part is tenanted, and part not tenanted, the rule is as follows:

Doe, on the demise of A. B. } Unless C. D. [&c.] Roe .... } tenants in possession of part of the premises in question, and unless or some other person claiming title to such parts of the said premises as are untenanted, shall appear and plead to issue on next after , let judgment be entered for the plaintiff against the now defendant Roe, by default: But execution shall issue for such part of the premises only as is in the possession of the said tenants, and such other parts as are untenanted.

By the Court.

You must pay the Clerk 7*s*., and 6*d*. for every tenant after the first. One rule is enough, though there may be several tenants. This rule must be drawn up, and taken from the office of the Clerk of the Rules, within two days after the end of the Term in which it was moved for otherwise it will not be drawn up or entered, and no further proceedings can be had in such ejectment.

At the expiration of the time for the tenant's appear-

ance, search the books at the Judge's chambers for a plea and consent rule on the part of the tenant; and, *if none be filed*, make an incipitur on a 10*s*. stamped paper, and an incipitur on the roll; take the judgment paper and the roll to the Clerk of the Judgments, and he will sign the judgment; then take them to the Master, who will tax the costs, and mark them on the judgment paper. *No rule* for judgment is necessary in this case. Pay the clerk 4*s*. 2*d*. The following is the form of judgment by original, with a remittitur damna:

As yet of Term, in the year of the reign of King William the Fourth. Witness, Edward Lord Ellenborough.

—— to wit. John Doe, on the demise of A. B. puts in his place I. K. his attorney, against Richard Roe, in a plea of trespass and ejectment of farm.

—— to wit. The said Richard Roe in person, at the suit of the said John Doe, in the plea aforesaid.

—— to wit. Richard Roe was attached to answer John Doe, &c. [*copy the declaration to the end, omitting the notice, and proceed on a new line as follows:*]

And the said Richard Roe, in his proper person, comes and defends the force and injury when, &c. and says nothing in bar or preclusion of the said action of the said John Doe; whereby the said John Doe remains therein undefended against the said Richard Roe: Therefore it is considered, that the said John Doe recover against the said Richard Roe, his said term yet to come of and in the tenements aforesaid, with the appurtenances, and also his damages sustained by reason of the trespass and ejectment aforesaid: And hereupon the said John Doe freely here, in Court, remits to the said Richard Roe all such damages, costs, and charges, as might or ought to be adjudged to him the said John Doe, by reason of the trespass and ejectment aforesaid: therefore let the said Richard Roe be acquitted of those damages, costs, and charges, &c. And hereupon the said John Doe prays the writ of the said Lord the King, to be directed to the Sheriff of the county aforesaid, to cause him to have possession of his said term yet to come of and in the tenements aforesaid, with the appurtenances; and it is granted to him, returnable before the said Lord the King, on wheresoever, [&c.]

Where the proceeding is by *bill*, the form of judgment is as follows

—— to wit. Be it remembered, that in Term last past, before our Lord the King at Westminster, came John Doe, by I. K. his attorney, and brought into the Court of our said Lord the King, before the King himself then there, his certain bill against Richard Roe, being in the custody of the marshal of the Marshalsea of our said Lord the King, before the King himself, of a plea of trespass and ejectment; and there are pledges for the prosecution thereof, to wit, John Den and Richard Fen; which said bill follows in these words, that is to say: —— to wit. John Doe complains of Richard Roe, being in the custody, &c. [*here copy the declaration to the end, omitting the pledges and notice, and then proceed on a new line as follows:*]

And now at this day, that is to say, on next after , in this same Term, until which day the said Richard Roe had leave to imparl to the said bill, and then to answer the same, &c. before our said Lord the King at Westminster, come as well the said John Doe, by his attorney aforesaid, as the said Richard Roe in his proper person; and the said Richard Roe defends the force and injury when, &c. and says nothing in bar or preclusion, &c. [*as before, making the writ of possession returnable on a day certain.*]

When this judgment against the casual ejector has been signed, make out a præcipe for a writ of possession, in the following form:

William the Fourth, [*&c.*] To the Sheriff of ——, greeting:

Whereas John Doe, lately in our Court before us at Westminster, by our writ, [*or, if by bill, say,* "by bill without our writ,"] and, by the judgment of the same Court, recovered against Richard Roe his term then and yet to come of and in dwelling-houses, &c. [*as in the declaration in ejectment,*] with the appurtenances, situate and being in the parish of in your county, which A. B. on the day of in the year of our reign, had demised to the said John Doe, to hold the same to the said John Doe and his assigns, from the day of then last past, for and during and unto the

full end and term of years from thence next ensuing, and fully to be complete and ended; by virtue of which said demise, the said John Doe entered into the said tenements with the appurtenances, and was possessed thereof, until the said Richard Roe afterwards, to wit, on the day of in the year aforesaid, with force and arms, &c. entered into the said tenements with the appurtenances, which the said A. B. had demised to the said John Doe, in manner and for the term aforesaid, which was not then nor is yet expired, and ejected the said John Doe from his said farm; whereof the said Richard Roe is convicted, as appears to us of record: Therefore we command you, that, without delay, you cause the said John Doe to have the possession of his said term yet to come of and in the tenements aforesaid, with the appurtenances; and in what manner you shall have executed this our writ, make appear to us, on wheresoever we shall then be in England; and have there this writ. Witness, [&c.]

Engross this writ on a 5*s.* stamped parchment; get it signed, for which you pay 1*s.* 8*d.*, and sealed, for which you pay 7*d.* Take the writ to the Sheriff's office; get a warrant on it, and give the warrant to an officer to execute, in the way mentioned hereafter.*

Having described the process of the action by ejectment, where the tenant suffers judgment by default, the next business is to follow up the process,

On the Appearance and Plea by Tenant.

The appearance is entered and plea delivered, either by the tenant upon whom the declaration and notice were served, or by his landlord, or by both jointly, or by some other person claiming title to the premises. In *town causes*, where the notice requires the tenant to appear on the first day of the Term, he is allowed four days after the rule for judgment, already mentioned, has been drawn up and entered, to appear and plead, provided the rule be drawn up and entered before the last four days of the Term; or if drawn up and entered within the last four days of Term, he has until two days before the essoign day of the following Term allowed him. But, if the notice were to appear generally of the Term, he shall have

* Before the warrant is executed, the Court, or a Judge in vacation, may allow the tenant to appear and plead, *but not after* the execution of such warrant.

the entire of the Term to appear and plead In *country causes*, the tenant, &c. has until four days exclusive after the issuable Term previous to the Assizes, allowed him for the same purpose.

A tenant is not bound to appear, even although his landlord offer to indemnify him; nor can the landlord appear and defend the ejectment in the tenant's name, without his consent. The landlord, however, may have leave to appear and defend the action in his own name, as shall be stated presently; and for this purpose the tenant, when served with a declaration in ejectment, is bound to give immediate notice thereof to his landlord, under pain of forfeiting three years' improved rent of the premises. On the other hand, if the ejectment be brought by the landlord, or any other person claiming under him, the Court will not let the tenant in to defend the action on any supposed defect of title.

The mode of appearing for a tenant is this:—Get a blank consent rule at the stationer's, and fill up the form, which is as follows:

In the King's Bench.

——— Term, in the year of the reign of King William the Fourth.

—— to wit, Doe, on the demise of A. B. against Roe, for messuages, [&c.] in the parish of in the said county: [*or, if there be several demises, say,* "Doe, on the demise of A. B. for messuages, [&c.] in the parish of in the said county, and also on the demise of E. F. for other messuages, [&c.] in the parish of in the said county, against Roe;" *and, if the tenant appear for part only, add,* "being part of the premises mentioned in the declaration."]

It is ordered, by the consent of the attorneys for both parties, that C. D. be made defendant in the stead of the now defendant Roe, and do forthwith appear, at the suit of the plaintiff, and [*if the ejectment be by* BILL] *file common bail*, and receive a declaration in an action of trespass and ejectment, for the premises in question, and forthwith plead thereto not guilty: and upon the trial of the issue, confess lease, entry, and ouster, and insist upon the title only; otherwise let judgment be entered for the plaintiff against the now defendant Roe, by default. And if upon the trial of the said issue, the said C. D. shall not confess lease, entry, and ouster, whereby the plaintiff shall not be able further to prose-

cute his WRIT [*or*, "bill"] against the said C. D. then no costs shall be allowed for not further prosecuting the same, but the said C. D. shall pay costs to the plaintiff, in that case to be taxed: And it is further ordered, that if, upon the trial of the said issue, a verdict shall be given for the said C. D. or it shall happen that the plaintiff shall not further prosecute his said writ, [*or*, "bill,"] for any other cause than for not confessing lease, entry, and ouster, then the lessor of the plaintiff shall pay to the said C. D. costs in that case to be adjudged.

I. K. attorney for the plaintiff.
L. M. attorney for the defendant.

In drawing up the rule on this consent, the Clerk of the Rules prefixes the day of making it; omits the premises in the margin; and, instead of the names of the attorneys at the end, adds "By the Court."

If the ejectment be upon a supposed original, strike out the words "*and file* common bail" in the printed form, and, instead of the word "BILL," insert "WRIT." In the margin state the parcels stated in the declaration, or such part of them as the tenant defends for. Let the defendant's attorney sign the rule, leaving room above his signature for that of the attorney of the plaintiff. Take this rule to the Filacer, if the action be by *original*, and enter an appearance for the tenant by præcipe, in the following form:

—— to wit. Appearance for C. D. at the suit of John Doe, on the demise of A. B.

In the King's Bench.

John Doe, on the demise of A. B. plaintiff,
and
C. D. ....defendant.

I confess this action, and that the said John Doe is entitled to recover his term yet to come of and in mes-suages, [*&c.*] with the appurtenances, situate, [*&c.*] being parcel of the tenements mentioned in the declaration in this cause, and also that the said John Doe hath sustained damages, by reason of the trespass and ejectment complained of, to the sum of £ , besides his costs of suit, to be taxed by the Master; but no judgment is to be entered up, or execution issued, until the day of next, in default of my then delivering up the possession

of the said messuages, [&c.] to the said A. B. and paying him the said sum of £ , together with the said costs: And I do hereby agree, that no writ of error shall be brought, &c.

If the action be by bill, take the rule to the Clerk of Common Bails, and file common bail for the defendant in the following form, which may be had in blank at the stationer's:

> —— Term, in the year of the reign of King William the Fourth.
>
> *Markham & Le Blanc.*
>
> —— (to wit). C. D. having been served with process, is delivered to bail to
>
> John Doe, of yeoman,
> and
> Richard Roe, of the same place, yeoman,
>
> E. F. attorney, at the suit of A. B.
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The Filacer, or Clerk of the Common Bails, will, at the same time, mark the consent rule. Next engross the general issue, according to the following form:

—— Term, [&c.]

C. D. ats. Doe, on the demise of A. B. } And the said C. D. by L. M. his attorney, comes and defends the force and injury when, &c. and says that he is not guilty of the supposed trespass and ejectment above laid to his charge, in manner and form as the said John Doe hath above thereof complained against him: And of this he the said C. D. puts himself upon the country, &c.

Then annex the rule to it, and leave both at the Judge's chambers. Pay his clerk 2s. When the time limited for the tenant's appearance has expired, the plaintiff or his attorney should call at the Judge's chambers, and get the consent rule; and, after separating the plea of the defendant from the rule, let him sign the latter, and take it to the Clerk of the Rules, who will thereupon draw up a rule in the following form:

Doe, } It is ordered, by the consent of the attorneys
Roe. } for both parties, that C D. be made defendant, &c. [*as before*, p. 181, *to* "not guilty;"] and, upon the trial of the issue, confess lease and entry, and also ouster of the nominal plaintiff, in case an actual ouster of the plaintiff's lessor, by the defendant, shall be proved at the trial, but not otherwise, and insist upon the title and such actual ouster only; otherwise let judgment be entered, [*&c.*] and if upon the trial of the said issue, the said C. D. shall not confess lease and entry, and also ouster upon the condition aforesaid, whereby, [*&c.*]: And it is further ordered, that if upon the trial of the said issue a verdict shall be given for the said C. D. or it shall happen that the plaintiff shall not further prosecute his said writ, [*or* "bill,"] for any other cause than for not confessing lease and entry, and also ouster, subject to the condition aforesaid, then the lessor of the plaintiff shall pay to the said C. D. costs in that case to be adjudged.

By the Court.

If the plaintiff decline taking the plea, &c. from the Judge's chambers, or if he delay proceeding afterwards, the defendant may rule him to *reply;* and if he do not reply within the time limited by the rule, the defendant may sign judgment of *non-pros*, in the following form:

As yet of Term, [*&c.*]

—— to wit. C. D. puts in his place E. F. his attorney, at the suit of John Doe, on the demise of A. B. in a plea of trespass and ejectment of farm.

—— to wit. C. D. was attached to answer unto John Doe, &c. [*to the end of defendant's plea, and then as follows:*]

And upon this the said C. D. prays that the said John Doe may reply to the aforesaid plea of him the said C. D. and thereupon a day is given by the Court here to the said John Doe, before our Lord the King, until wheresoever, [*&c.*] that is to say, for him the said John Doe to reply to the aforesaid plea of the said C. D.; the same day is given to the said C. D. at the same place: At which day, before our said Lord the King, at Westminster, comes the said C. D. by his attorney aforesaid; and the said John Doe, although at that day solemnly called, comes not, nor hath he replied to the aforesaid plea of the said C. D. nor doth he further prosecute his

said writ: Therefore it is considered by the Court here, that the said John Doe take nothing by his said writ, but that he and his pledges to prosecute be in mercy, &c. and that the said C. D. do go thereof without day, &c.

When you have got the stamped rule from the Clerk of the Rules, make up the issue as in ordinary cases, (which will be given hereafter in the description of the mode of proceeding in ordinary actions.) Annex a copy of the rule to the issue, and deliver it to the defendant's attorney.*

The plaintiff or defendant, at any time before trial, may take out a summons before a judge, calling upon the defendant for a bill of particulars of the premises for which he intends to defend the action, if they have not been already specified in the consent rule. The judge's order in such case is made in this form:—

C. D. .... } Upon hearing the at-
ats. } torneys or agents on both
Doe, on the demise of A. B. } sides, and by consent, I do order that the plaintiff do deliver to the defendant's attorney, the particulars of the premises for which this ejectment is brought; and in the mean time, all further proceedings in this cause be stayed Dated the day of 18

To which the return by the plaintiffs is as follows:—

I do hereby give you notice, that this ejectment is brought for the recovery of messuages, (&c.) with the appurtenances, situate in the parish of , in the county of . Dated, [&c.]

Yours, &c.

I. K. *plaintiff's attorney.*

To Mr. L. M. defendant's attorney.

And of the defendant as follows:—

I do hereby give you notice, that this ejectment is defended for messuages, [&c.] with the appurtenances situate in the parish of , in the county of , now in the possession of the above-named C. D. or his undertenant. Dated, [&c.]

Yours, &c.

L. M. *defendant's attorney*

To Mr. I. K. plaintiff's attorney.

* If the tenant defends only for part, the plaintiff may sign judgment as before for the remainder against the casual ejector.

The next stage in the proceedings to consider is the

Appearance and Plea by Landlord

The tenant in possession is not bound to appear and defend the action, yet he is obliged under a penalty to give his landlord notice when a declaration in ejectment has been served on him, and the Court may allow the landlord to make himself defendant, by joining with the tenant, if the tenant appear; but if the tenant neglect or refuse to appear, judgment shall be signed against the casual ejector, for want of such appearance; yet if the landlord shall desire to appear by himself, and consent to enter into the like rule the tenant must have entered into had he appeared, the Court shall permit him to do so, and shall order a stay of execution upon the judgment against the casual ejector until they shall make further order therein.

The motion for the landlord to be admitted to defend, is a motion of course, and requires only counsel's signature. Therefore, get the motion paper signed by counsel, take it to the Clerk of the Rules, pay him 10*s*. 6*d*., and draw the rule in the following form:—

Doe, on the demise of A. B. } It is ordered, that
Roe .. .. } E. F. landlord of the tenant in possession of the premises in question in this cause, shall be joined and made defendant with the same tenant, if he shall appear: And the said E. F. desiring, if the said tenant shall not appear, that he may appear by himself, and consenting that in such case he will enter into the common rule to confess lease, entry, and ouster, in such manner as the said tenant ought, in case he had appeared; [*or, if the rule be special, to confess lease and entry only, say,* "to confess lease and entry only, without ouster, unless an actual ouster of the lessor of the plaintiff, by the said C. D. or those claiming under him, be proved at the trial;"] leave is given to the said E. F. pursuant to the late Act of Parliament, if the said tenant shall not appear, to appear by himself, and upon his entering into such common rule, to become defendant in the stead of the casual ejector, and to defend his title to the said premises without the said tenant: The plaintiff, nevertheless, is at liberty to sign judgment against the casual ejector; but execution thereon is stayed, until the Court shall further order. Upon the motion of Mr. ——.

By the Court.

In the Common Pleas, the form runs thus:—

It is ordered, that E. F. landlord of the premises in question, be joined and made defendant, together with C. D. tenant in possession of the premises in question, in the common rule by consent in ejectment, instead of the casual ejector, in case the said C. D. shall appear: And it is further ordered, that in case the said C. D. shall neglect to appear, the said E. F. may appear by himself, and defend his title to the premises in question, pursuant to the late Act of Parliament; he hereby consenting to enter into the like rule that the said C. D. by the course of the Court, in case he had appeared, ought to have done: Nevertheless, the plaintiff shall be at liberty to sign judgment against the casual ejector; but execution is hereby stayed, until this Court shall make further order therein: And by consent of counsel for the said E. F. it is further ordered, that the said E. F. upon the trial to be had, shall admit himself to be in the actual possession of the said premises. On the motion of Mr. Serjeant Shepherd, for the said E. F.

By the Court.

Annex a copy of this rule to the consent rule and plea, before you leave them at the judge's chambers, and then proceed as in the last section, where the tenant appears alone. If the landlord appear by himself, the plaintiff has the power and should immediately sign judgment against the casual ejector; and if the landlord afterwards fail at the trial, the plaintiff, upon producing the postea and office copies of the rules, may move for leave to sue out an execution, and the Court will accordingly grant a rule in the following form:—

Doe, on the demise of A. B. } Upon reading a rule
Roe .... } made in this cause on
, and E. F. therein-named having made himself defendant in the stead of the casual ejector, pursuant to the said rule, and the *postea* in the said cause being produced and read, and a rule made in the same cause this day; it is ordered, that the said E. F. upon notice of this rule to be given to his attorney, [*&c.*] shew cause, why the plaintiff should not have leave to sue out execution, upon the judgment signed against the casual ejector, pursuant to the first-mentioned rule. Upon the motion of Mr.——

By the Court.

When you have got the stamped consent rule from the Clerk of the Rules, make a copy of it; make up the issue as in ordinary cases, only substituting the name of the tenant, &c. for that of Richard Roe in the declaration; indorse the notice of trial on the issue, and annex to it the copy of the rule; and deliver them to the defendant's attorney. Then sue out jury process, make up your nisi prius record, enter the cause for trial, and deliver your briefs to counsel, as in other cases.

The following is the form of an issue by original:—

—— Term, [*the Term of the appearance and plea,*] in the year of the reign of King William the Fourth.

—— (to wit). C. D. was attached to answer John Doe, &c. [*as in the declaration to the end, substituting the name of the real defendant for that of the casual ejector, and omitting the notice; after which, proceed on a new line as follows:*]

And the said C. D. by L. M. his attorney, comes and defends the force and injury when, &c. and says that he is not guilty of the supposed trespass and ejectment above laid to his charge, in manner and form as the said John Doe hath above-thereof complained against him: And of this he the said C. D. puts himself upon the country; and the said John Doe doth so likewise: Therefore the Sheriff is commanded, that he cause to come before our Lord the King, on wheresoever our said Lord the King shall then be in England, twelve, &c. by whom, &c. and who neither, &c. to recognise, &c. because as well, &c.; the same day is given to the parties aforesaid, &c.

The issue by *bill*, jury-process, and record of *nisi prius* in ejectment, are the same as in other cases, except that the plea or action is described as "a plea of trespass and ejectment of farm."

If the plaintiff do not proceed to trial in pursuance of his notice, without having countermanded it in time, the defendant shall have his costs of the day or judgment, as in case of a nonsuit, as in other cases.

If the defendant do not appear and confess lease, entry, and ouster, then, after calling the defendant, (and his attorney, if he be within the rule,) the plaintiff must be called and nonsuit; and at the prayer of the plaintiff this fact is entered on the postea, namely, that the plaintiff

was nonsuit because the defendant did not appear and confess lease, entry, and ouster, which will entitle him to sign judgment against the casual ejector. So, if there be several defendants, and some of them do not appear and confess lease, entry, and ouster, a verdict must be taken for them, but with an indorsement on the postea that it was because they did not appear and confess; and the trial proceeds as to the defendants who have appeared. After being nonsuit for this cause, you may, on or after the day in bank, sign judgment against the casual ejector, in the same manner as if the defendant had never appeared and pleaded, and sue out execution. You may also proceed upon the consent rule for your costs. Take the judgment paper, consent rule, and postea, to the Master, and he will tax the costs upon the rule. Then make a copy of the rule and allocatur; serve it personally on the defendant, at the same time shewing him the original rule; make a demand of the costs, and, if he do not pay them, move the Court for an attachment against him. It is not necessary, in this case, that the postea or rule be stamped with a 10*s*. stamp.

The plaintiff is not restricted in his proof to the number of acres, &c. or quantity of estate set forth in his declaration. Therefore if he declare for forty acres, he may recover twenty; if he demand a moiety, he may recover a third. If the verdict be special, it should appear upon the face of it that the lessor of the plaintiff had a right of entry, at the time he commenced his ejectment.

If the plaintiff have a verdict, he recovers his costs against the defendant by a writ of execution, or by action, as in ordinary cases; but if entitled to costs under the consent rule, upon his being nonsuit, as is above-mentioned, the only way of recovering them is by attachment. So, if the defendant be entitled to costs, either upon verdict or where the plaintiff is nonsuit, his only remedy is by attachment; for the lessor of the plaintiff not being a party to the reccrd, he cannot have a writ of execution against him, but must proceed upon the consent rule only. The usual mode is, to tax costs upon the postea, as in other cases, and sue out a *ca. sa.* against the nominal plaintiff for the amount of them; make copies of the rule, allocatur, and *ca. sa.*, and serve them on the lessor of plaintiff, at the same time shewing him the originals, and demanding the costs; and, if he do not pay them, move the Court for an attachment against him.

When the judgment is given, let the prevailing party

get the record of *nisi prius* from the Associate, and, in town causes, indorse the postea upon it, according to the following forms:

Form of Postea for the Plaintiff on Not Guilty.

Afterwards, &c. [*as before, to the words* "tried and sworn," *and then as follows:*] say upon their oath, that the said C. D. is guilty of the trespass and ejectment within laid to his charge, in manner and form as the said John Doe hath within complained against him; and they assess the damages, &c. [*as before.*]

The like for Defendant.

Say upon their oath, that the said C. D. is not guilty of the trespass and ejectment within laid to his charge, in manner and form as the said John Doe hath within complained against him: Therefore, &c.

The like, where Part is found for the Plaintiff, and Part for the Defendant.

——— as to , parcel of the tenements within-mentioned, say upon their oath, that the said C. D. is guilty of the trespass and ejectment within laid to his charge, in manner and form as the said A. B. hath within thereof complained against him; and they assess the damages, [*&c.*] And as to the residue of the tenements within-mentioned, the Jurors aforesaid, upon their oath aforesaid, say, that the said C. D. is not guilty of the trespass and ejectment within laid to his charge, in manner and form, [*&c.*] Therefore, &c.

Then enter a rule for judgment, as before; and, if the verdict be not set aside, or the judgment arrested before the rule expires, if the verdict be for the plaintiff he proceeds to tax costs, and to sign final judgment, as before: if the verdict be for the defendant, costs are taxed upon the consent rule, as before mentioned.

Upon judgment for the plaintiff, he is entitled to a writ of possession, the form of which is given before, and he may have a separate writ for the costs.

In order to sue out the writ, make out a præcipe for it, and engross the writ on a 5*s.* stamped parchment; get it signed—pay 1*s.* 8*d.*; and sealed—pay 7*d.* Leave it at the Sheriff's office, and get a warrant on it—pay 2*s.* 6*d.*; give the warrant to the officer, and he will execute the writ, by putting the lessor of the plaintiff, or some person

on his behalf, into possession, upon the premises being shewn to him. The officer, if necessary, may break open the doors, in order to execute an *habere facias possessionem*, if the possession be not quietly given up; or he may take the *posse comitatus* with him, if he fear violence. And after he has got admission, he may remove all persons, goods, &c. from off the premises, before he gives possession. If there be several tenements in the possession of several tenants, the officer must give possession of each, separately; but if the several tenements be in the possession of one tenant, and included in the same action, possession of one, in the name of the whole, will be sufficient. If he give possession of more than he ought, the Court afterwards, upon application, will order it to be restored. Thus, where an ejectment was brought by a tenant in common, to recover five-eighths of a cottage, and the Sheriff, in execution of the writ of possession, turned the tenant in possession out of the cottage altogether; the Court, upon application, granted a rule upon the Sheriff and the lessor of the plaintiff, requiring them to restore the tenant to the possession of three-eighths of the premises.

If the yearly value of the premises do not exceed £100, he Sheriff is entitled to a poundage of 12*d.* in every 20*s.*; out if it exceed £100, then to 6*d.* for every 20*s.* above hat sum.

The tenant or tenants in possession, however, to save the expense of executing a writ of possession, may attorn to the lessor of the plaintiff, in the following method:

In the King's Bench.

Between { John Doe, on the demise of A. B. plaintiff, and C. D. [*&c.*] defendant.

Be it remembered, that we whose names are hereunder written, being the several tenants in possession of the premises in question in this cause, situate and being in the parish of in the county of , do hereby severally attorn tenants to A. B. of , the lessor of the plaintiff in this cause, for such parts of the said premises as are in our respective possessions; and we, and each and every of us, have this day severally paid to the said A. B. the sum of 1*s.* upon such attornment, on account and in part of the rent due, and to become due from us severally and respectively, for and in respect of the said premises;

and we do severally and respectively become tenants thereof to the said A. B. from the day of last past. As witness our hands, this day of in the year of our Lord 183 . Witness, [&c.]

C. D [&c.]

To E. F. [&c.] Gentlemen, attorneys of his Majesty's Court of King's Bench at Westminster, jointly and severally, or to any other attorney of the same Court.

These are to desire and authorise you the attorneys above-named, or any one of you, or any other attorney of the Court of King's Bench aforesaid, to appear for me C. D. of in the said Court, as of this present Term, or of any other subsequent Term, and then and there to receive a declaration for me, in an action of trespass and ejectment of farm, at the suit of John Doe, on the demise of A. B. for messuages, [&c.] with the appurtenances, situate, [&c.] which the said A. B. on [&c.] had demised to the said John Doe, for the term of years, from [&c.] and thereupon to confess the same action, or else to suffer judgment, by *nil dicit* or otherwise, to pass against me in the same action, and to be thereupon forthwith entered up against me of record in the said Court, for the recovery of the said term yet to come of and in the said tenements, with the appurtenances, and also for the recovery of £ damages, besides costs of suit: And I the said C. D. do hereby further authorise, &c. [*as before.*]

This must be written on unstamped paper, and signed by the tenants, in the presence of a witness.

The proceedings upon a writ of error on a judgment are the same as in ordinary cases, with one or two exceptions; but the death of a nominal plaintiff cannot be assigned for error; nor can a defendant in ejectment assign for error, that, being an infant, he appeared by attorney. Where a defendant brings a writ of error, the Court will oblige him to enter into a rule not to commit waste pending the writ; and the Court will also grant a writ to inquire into any damages by waste, as well as of the mesne profits after the first judgment in ejectment; and upon the return thereof, judgment will be given and execution awarded for such profits and damages, and also for costs of suit; and an action may be brought for them against *the bail, after* the amount is ascertained upon the writ.

In an action of ejectment, the legitimacy of the parties frequently comes in question. An opinion appears to have prevailed at one time, that, unless the husband was out of the kingdom during all the time of the wife's going with child, access must be presumed, and the child must be deemed legitimate. But, on examination of this doctrine, it was found unsatisfactory; and it is now holden, that non-access may be proved to bastardise the issue, although it should appear that the husband was within the kingdom during the period of the pregnancy. So where the husband, in the course of nature, cannot have been the father of his wife's child, the child is by law a bastard, whether the husband be within the reach of access or not; as in the case of a natural impossibility, the husband being within the age of puberty, or disabled by bodily infirmity. So, where it was proved that the husband had not access until a fortnight before the birth of the child, the child was adjudged to be illegitimate. The wife is a witness of necessity, as to the fact of adulterous intercourse, because that lies within her own knowledge, and she is the only person who may be supposed privy to it, except the adulterer. This case, therefore, affords an exception to the general rule which prohibits the wife from being examined against her husband in any matter affecting his interest or character. But non-access must be proved by other testimony than that of the wife; and this rule holds although the husband be dead.

The presumption of legitimacy arising from the birth of a child during wedlock, the husband and wife not being proved to be impotent, and having opportunity of access to each other during the period in which a child could be begotten and born in the course of nature, may be rebutted by circumstances inducing a contrary presumption.

The fact of the birth of a child from a woman united to a man by lawful wedlock is generally, by the law of England, *prima facie* evidence that such child is legitimate; but such *prima facie* evidence of legitimacy may always be rebutted by satisfactory evidence that such access did not take place between the husband and wife as by the laws of nature is necessary, in order for the man to be in fact the father of the child. The physical fact of impotency, or non-access, or non-generating access, as the case may be, may always be lawfully proved by means of such legal evidence as is strictly admissible in any other case in which it is necessary, by the law of England, that a physical fact be proved.

After proof given of such access of the husband and wife, by which, according to the laws of nature, he might be the father of a child, by which is to be understood proof of sexual intercourse between them, no evidence can be received, except it tend to falsify the proof that such intercourse had taken place. Such proof must be regulated by the same principles as are applicable to the establishment of any other fact.

In every case where a child is born in lawful wedlock, the husband not being separated from his wife by a sentence of divorce, sexual intercourse is presumed to have taken place, until that presumption is encountered by such evidence as proves that it did not take place at any time when, by such intercourse, the husband could, by the laws of nature, be the father of such child.

A child begotten after a divorce, *a mensa et thoro*, shall be taken to be a bastard; but not so in a case of voluntary separation, unless it be satisfactorily proved that the husband had no access.

Proceedings in Ejectment for non-payment of Rent.

If a tenant forfeit his term by non-payment of rent, the landlord may recover possession of the premises by ejectment, even when there is sufficient distress upon the premises; but this mode is seldom adopted; first, on account of the great nicety to be observed in the previous demand of rent, which must be made precisely on the *last day* on which it can be paid to save the forfeiture; and the demand must be made of the precise sum due, and not a penny more or less; and, secondly, because the tenant, by filing a bill in equity, may obtain an injunction, and stay the proceedings upon payment of the rent in arrear. So that where there is sufficient property, it is generally levied by distress, as the safest mode. But where there is not sufficient distress, and the term is forfeited by non-payment of rent, the proceedings in ejectment by the landlord for the recovery of rent, in such a case, are regulated by the 4th of George II., cap. 28, by which it is enacted, that when one half-year's rent is due, the landlord may serve a declaration in ejectment for the recovery of the demised premises; but this does not do away the necessity of a previous demand of the rent, if the provisions of the lease require it; only that the demand need not be made with the *exactness* required by the common law, as mentioned before.

The *declaration* is the same as in ordinary cases; the

forms of which are given before, both in cases of vacant possession, and where the premises are tenanted. The same rules of service of the notices, &c. apply; and if the tenant take no steps to have himself made a party to the suit, the plaintiff may then proceed to obtain judgment against the casual ejector, as in ordinary cases. In order to this, an affidavit must be made of the service or affixing of the declaration and notice, and also stating that half a year's rent was due before the declaration was served, and that no sufficient distress was to be found on the demised premises countervailing the arrears then due, and that the lessor or lessors had power to re-enter. Annex this affidavit to the declaration, move upon it for judgment against the casual ejector, draw up the rule, and sign judgment as directed before.

The *appearance*, plea, and other proceedings to trial, &c. are the same as mentioned in the foregoing section; but at the trial, the plaintiff, in addition to what in other cases he would have to give in evidence, must *prove* that "half a year's rent was due before the declaration was served, and that no sufficient distress was to be found on the demised premises countervailing the arrears then due, and that the lessor had power to re-enter by the lease."

But if the tenant, or his assigns, at any time *before* trial, pay, or tender, or pay into Court, all arrears of rent, with the costs, all further proceedings must necessarily cease.

ADDENDA.

There are various incidental considerations which belong to the relation of landlord and tenant, which do not belong to any general head, but are worthy of the consideration of the parties interested, to which we shall now refer; and amongst which are,—

The Tenant's Right to Emblements and Estovers.

Emblements are the annual productions of the earth, which are raised by, and form the profits of, the tenant; such as all sorts of corn, beans, peas, &c. Such as are not of annual growth, but form a permanent sort of appendage to the estate, as fruit-trees, grass, &c. are not considered emblements, and cannot be removed or claimed by the outgoing tenant.

Tenants for life, their representatives and under-tenants, and tenants at will, are entitled to emblements.

Tenant for life, or his representative, shall not be prejudiced by any sudden determination of his estate, because such a determination is contingent and uncertain. Therefore, if a tenant for his own life sow lands, and die before harvest, his executors shall have the emblements, or profits of the crop, to compensate for the labour and expense of tilling, manuring, and sowing the lands.

So it is also, if a man be tenant for the life of another, and *cestui que vie* (or he on whose life the land is held) dies after the corn sown, the tenant *pur autre vie* shall have the emblements. The same is also the rule, if a life estate be determined by the act of law, or by the act of the lessor. Therefore, if a lease be made to husband and wife during her coverture (which gives them a determinable estate for life), and the husband sows the land, and afterwards they are divorced *a vinculo matrimonii*, the husband shall have the emblements in this case; for the sentence of divorce is the act of law.

But if an estate for life be determined by the tenant's own act (as by forfeiture for waste committed, or if a tenant during widowhood thinks proper to marry), in these and similar cases, the tenants having thus determined the estate by their own acts shall not be entitled to take the emblements.

Also, the under-tenants, or lessees, have the same, nay, greater indulgences than the lessors, or the original tenants for life; for the law of estovers and emblements, with regard to the tenant for life, is also law with regard to his under-tenant, who represents him, and stands in his place: and greater; for in those cases where a tenant for life shall not have the emblements, because the estate determines by his own act, the exception shall not reach his lessee, who is a third person. As in the case of a woman who holds during widowhood, her taking a husband is her own act, and therefore deprives her of the emblements; but if she lease her estate to an under-tenant, who sows the land, and she then marries, this her act shall not deprive the tenant of his emblements, who is a stranger, and could not prevent her.

With regard to emblements, or the profits of lands sowed by tenants for years, there is this difference between him and tenant for life, that where the term of tenant for years depends upon a certainty, as if he hold from Midsummer for ten years, and in the last year he sows a crop of corn, and it is not ripe and cut before Midsummer the end of his term, the landlord shall have it.

But where the lease for years depends upon an uncertainty, as upon the death of the lessor, being himself only tenant for life, or being a husband seised in right of his wife, or if the term of years be determined upon a life or lives, in all these cases, the estate for years not being certainly to expire at a time foreknown, but merely by the act of God, the tenant or his executors shall have the emblements, in the same manner that a tenant for life or his executors shall be entitled thereto.

Not so, if it determine by act of the party himself; as if tenant for years does any thing that amounts to a forfeiture; in which case the emblements shall go to the lessor, and not to the lessee, who hath determined his estate by his own default.

There is another right of the tenant called ESTOVERS; and common of estovers is a liberty of taking necessary wood for the use or furniture of a house or farm from off the estate. The Saxon word *bote* is used as synonymous to the French *estovers;* and therefore *house-bote* is a sufficient allowance of wood to repair or to burn in the house, which latter is sometimes called *fire-bote; plough-bote* and *cart-bote* are wood to be employed in making and repairing all instruments of husbandry; and *hay-bote*, or *hedge-bote*, is wood for repairing of hays, hedges, or fences. These *botes*, or *estovers*, must be reasonable ones; and such any tenant or lessee may take off the land let or demised to him, without waiting for any leave, assignment, or appointment of the lessor or landlord, unless he be restrained by a special covenant to the contrary.

Every tenant for life, unless restrained by covenant or agreement, may, of common right, take upon the land demised to him reasonable estovers or botes; for he hath a right to the full enjoyment and use of the land, and all its profits, during his estate therein. But he is not permitted to cut down timber, or do other waste upon the premises; for the destruction of such things as are not the temporary profits of the tenement, is not necessary for the tenant's complete enjoyment of his estate, but tends to the permanent and lasting loss of the person entitled to the inheritance.

If a tenant, for life or years, cut down trees, or pull down houses, or suffer them to fall down, the lessor shall have the trees and timber of the said houses.

The landlord also shall have windfalls, that is, timber-trees blown down by the wind and tempest, because they are part of the inheritance, to the exclusion of tenant for

life or years, unless, indeed, to rebuild, or repair houses going to decay; but if they be dotards or pollards, which bear neither leaves nor fruit, such, if blown down, shall go to the tenant.

Estovers granted to be burned in the house, go to the person that has the house, by whatever title; for one is inseparably incident to the other.

Lessees for life or years, tenants in dower, or by courtesy, or tenants in tail after possibility of issue extinct, have only a special interest or property in the trees, as things annexed to the lands, so long as they are annexed thereto; but if they sever the trees from the land, then their interest is determined, and the lessor may take the trees as things that are parcel of his inheritance, the interest of the lessee being determined.

If a stranger cut down a tree growing on the land of a lessee for years, and carry it or the bark thereof away, the lessor, at his election, may have either an action of trover against the stranger, or an action of waste against the lessee; for the property of the timber is always in the lessor.

If a person have estovers uncertain in ten acres of wood, and five of them descend to him, he shall have the whole out of the residue.

If a man grant to another estovers uncertain in such a wood, and afterward the grantor make such waste in the wood as that there is not sufficient store left, out of which the grantee may take his estovers, he may have a writ of *quo minus* against the grantor, which is in the nature of a prohibition.

The lord of a manor has no right, under the statute of Merton, to enclose and approve the wastes of a manor, where the tenants of a manor have a right to dig gravel on the wastes, or to take estovers there; but any person who is seised in fee of part of a waste within a manor may approve, leaving a sufficiency of common, although not lord of the manor.

The next general question to be considered is that of

FIXTURES.

By the common law, every thing erected on the premises by the tenant became the property of the landlord, and to remove them was waste; but this tended so materially to the injury of trade, that the principle has been gradually demolished, and it is now held, that any thing

erected for the purpose or for the benefit of trade may be removed, provided it is done *during the term of the lease*, or, if afterwards, by the permission of the lessor.

It is scarcely necessary to define what are landlord's fixtures, and what are tenant's, as most, if not all, leases contain a schedule of the fixtures belonging to the landlord; the only point, therefore, for consideration is, what erections or improvements made by the tenant are to be considered, and what not, as belonging to the freehold.

According to the common law, it was waste in the tenant to take down, break, or carry away any windows, wainscots, benches, doors, or furnaces, &c. fixed to the house, either by the tenant or the reversioner: but it is now settled, that the tenant may remove things merely ornamental, as hangings, pier glasses, wainscots fixed with screws, beds fastened to the ceiling or wall, marble chimney-pieces, &c.; and where the tenant has erected buildings for the purpose of carrying on trade, he may remove them, though they are fixed to the freehold; but this must be *before the determination of the lease;* such as a baker's oven, a dyer's or soap-boiler's vat, a varnish house, cider mills, furnaces, brewhouse coppers, fire or steam engines used in trade, salt pans, green-houses and hot-houses in gardeners' grounds, and trees in a nursery ground for sale. But though the doctrine here laid down may serve as a general guide, yet there are many cases in which it would be over-ruled, and which would call for the decision of a jury; to shew which, it is only necessary to observe, that Lord Ellenborough decided against the right of an agricultural tenant to remove a beast house, which was of brick and mortar, and *let into the ground*, and which had been erected at his own expense; and it having been done for the purpose of carrying on his agricultural business, it would seem to have come under the principle of trade, and to have belonged to the tenant; but the Court held otherwise. The safest course therefore is, to have, on the part of the tenant, a specific agreement that what he erects shall be his own, and that he shall have the power of removing it, or that it shall be allowed to him at a fair valuation.

REPAIRS

With respect to repairs, a tenant neglecting to keep premises in tenantable repair will be liable to waste. And this obligation to repair arises in two ways: first, by na-

tural implication of law; and, secondly, by express covenant to repair. A tenant, as we have said, omitting to keep the premises in natural repair, will, by the common law, render himself liable to an action of waste. Tenants at will, and tenants from year to year, are only bound to make reasonable repairs, such as mending and putting in windows, doors, &c. Tenants for life or years, are bound to keep the premises in substantial repair, provided they were so at the time of the demise, but not otherwise. By the 6 Anne, c. 31, sec. 6, 7, no tenant is liable to rebuild premises actually burnt, *unless he covenant so to do.*

But although by the common law an obligation is imposed on the tenant to keep the premises in reasonable repair, yet it is now more usual to insert covenants in the lease to effect the same object; these covenants of course differ according to circumstances, and are guided by the agreement entered into between the parties previous to the drawing of the lease. If the covenant to repair be general, it has been held that the lessee is bound to rebuild, even should the premises be destroyed by any accidental tempest or fire. To guard therefore against such casualties, it is best to stipulate against them, or, in case of fire, to effect an insurance to cover the possible loss. And in all cases where a tenant is bound by his covenant to repair, he is liable to pay rent, although he would be incapable, from any causes, of enjoying the premises.

Where a covenant is to repair and to leave the premises in the same state as he found them, the tenant is only bound to use his best endeavours for that purpose; and natural and unavoidable decay is no breach of such covenant.

If by any accident a house become ruinous, the covenant to repair will not be broken until a reasonable time has elapsed for its reparation; or, if to repair by a certain time be rendered impossible by the act of God, it will be no breach of the covenant.

An action against the lessee may be maintained for breach of covenant to repair, even before the expiration of the lease.

It is material to observe, that the lessee must repair before the expiration of the lease; for he cannot come upon the premises, after his term has expired, without being a trespasser.

Where a lessor covenants to repair, and does not do it, the lessee may cause the reparations to be made and deduct the expenses out of the rent.

THE TENANT'S REMEDIES AGAINST THE LANDLORD.

For Breach of Covenant.

If a landlord have committed a breach of covenant, where the lease is by deed, or violated his contract, where the lease is not by deed, or where it is by parol agreement, the tenant may in the former case bring an action of covenant against him, and in the latter case an action of assumpsit; and in the declaration it is not necessary that a breach of covenant should be assigned expressly, it will be enough to affirm generally; thus where an action was brought for a breach of covenant, the defendant pleaded he had a right to let for the term; the plaintiff assigned generally, that he had not a right; and this was held good.

And in assigning breach by entry of lessor, lessee may declare generally that he was ousted, without shewing the pretence or title upon which entry was made. Also, where covenant is against the entry of any other persons, the plaintiff may aver generally that such persons entered and ousted him, without being called upon to shew whether it were by right or not.

In action of covenant for quiet enjoyment, breach assigned was, that, at the time of the demise to the plaintiff, A. B. had lawful right and title to the premises, and, having such, evicted plaintiff; on demurrer, defendant objected, that the plaintiff ought to have shewn the title of A. B., or that the averment in the declaration should have been, that A. B. had such a title as was inconsistent with plaintiff's; and although it was alleged that A. B. had a lawful right and title, yet that might have been such only as would enable him to recover in a real action, and might not give him a right of entry; and the mischief which might arise from this loose mode of pleading was, that collusion might be used in order to cover eviction. The objections were overruled; and Lord Kenyon, in giving judgment, observed, that if the declaration were certain to a common intent, it was sufficient; that it would be doing violence to the words to say that the lawful right and title which it was stated that A. B. had, did not legalise his entry; that the fair import of the words was, that he had lawful right and title to do that which he did. And Mr. Justice Buller said, that when it was stated that the party having lawful right and title,

entered, it was the same as saying he entered by lawful right and title.

A covenant for quiet enjoyment to husband and wife will be broken where the husband is ousted.

Where the covenant for quiet enjoyment is without incumbrance from any person, the breach must be a lawful incumbrance.

Where a lease contains a covenant on the part of the landlord for renewal, the Court of Chancery will in most cases decree a specific performance of it; and where the covenant is for a perpetual renewal, and it is clear and unequivocal, the Court will order its execution.

A. held under a corporation, and demised to B., with covenant that he would renew as often as the corporation renewed to him; the corporation refused to renew to A., but put up the premises to the best bidder; A. became the best bidder, and refused to renew to B. at the same rent as before. The Court held, he was bound to renew upon the old terms, unless he chose to give up the property, and allow B. to stand in his place.

Where there was a covenant to renew at lessee's request within the term, who dies without making a request, but whose executors do, the lessor is bound to renew.

A covenant to renew is binding on purchasers.

With respect to leases granted by charitable foundations with covenants for renewal, the Court of Chancery will not decree a renewal for a longer term than what the charity is authorised to grant. An hospital was bound to grant no lease for more than twenty-one years; it, how ever, granted a lease for twenty-one years with covenant for renewal, so as to make it up sixty years; the Court held this not binding.

And where a college, restrained from making leases for twenty-one years, and at a rack-rent, made a lease for that term, but at less than a rack-rent, and recommended their successors to renew at the same rent, and when the lease had nearly run out, made an order to renew at the old rent, the Court, after expressing its disapprobation at such conduct, dismissed the bill with costs.

In the following cases, a Court of Equity will not decree performance of covenants for renewal; *viz.* In the case of insolvency of lessees, where the lessee has become bankrupt, the assignees will not be entitled to renewal. Where lessee has been convicted of felony, or where the agreement for renewal has been obtained by fraud or misrepresentation.

In covenant for renewal, the Court will not assist lessee where he has neglected to apply in due time, unless the delay is satisfactorily accounted for; and where the Court does interfere in favour of lessee, to relieve him from *laches*, it will take care that lessor shall be in the same situation as if lessee had applied for renewal in time.

It is material to observe, that lessee's expending money for the improvement of the estate will not entitle him in equity to a renewal; there must be a covenant to that effect, or at least some understanding between the parties.

For illegal Distress.

This is before shewn under the directions for replevin; but the principles upon which the tenant has a right to the action of replevin are worthy of consideration.

Replevin, therefore, is a justicial writ to the sheriff, complaining of an unjust taking and detention of goods or chattels; commanding him to deliver back the same to the owner, upon security given to make out the injustice of such taking, or else to return the goods and chattels.

There are two things complained of in this writ; viz. the *taking* and *detention* of the pledges. But what is principally controverted in the replevin, is, whether the *taking* be just or not; for there are but two cases wherein a distress justly taken, whether for rent or damage feasant, can be *unlawfully detained*.

The first is, where the arrear of rent, or amends for the damage, is tendered to the party distraining. And this tender must be made before the beasts or goods are impounded; for when the beasts or goods are in custody of the law, the person distraining cannot be said unlawfully to detain them. Hence, if a tender be made after impounding, and cattle die in pound, the owner shall bear the loss; because such tender comes too late to fix any fault or injustice on the person distraining. But if the tender had been before the impounding, the distrainor is answerable, because the impounding is unlawful.

The second case where the detainer is unlawful, is where the avowant hath return irreplevisable, and the owner of the beasts or goods tenders all that appears to be due on the judgment in the avowry. This detainer of the avowant is unlawful, and the owner may have his action of detinue for the detainer after the tender made. For though by the judgment the return is made irreplevisable, yet that is no final condemnation of the beasts or goods distrained; they are still to be considered as pledges in the hands of

the avowant, and therefore in their own nature liable to a redemption, upon payment or satisfaction of that rent or damages for which they were originally taken.

Although, by the common law, the writ of replevin was made justicial for the ease of the subject, and the more speedy administration of justice, yet the parties were exposed to many difficulties and inconveniences in the progress of the suit, which were afterwards removed by several statutes.

And first, by the statute 52 Hen. III. c. 21, (commonly called the statute of Marlbridge), the sheriff may hold plea in replevin *by plaint* of any value, as he might at common law on a writ of replevin.

And, to take away all the delays which attended the replevin by writ, the sheriff by this Act may, upon complaint made, command his bailiff, either by word of mouth or precept, to replevy the plaintiff's beasts or goods: but the sheriff must enter the plaint at the next County Court, that it may appear on the rolls of the Court.

And, for the more speedy delivery of cattle taken by way of distress, it is enacted by 1 & 2 Ph. & Mar. c. 12, sec. 3, "That every sheriff of shires, not being cities or towns made shires, shall, at his first county day, or within two months next after he hath received his patent of office, appoint, and proclaim in the shire-town within his bailiwick, *four* deputies at the least, dwelling not above twelve miles one from the other, who shall have authority in the sheriff's name to make replevins and delivery of distresses, in such manner and form as the sheriffs may and ought to do; upon pain that every sheriff, for every month that he shall lack such deputy or deputies, shall forfeit for every such offence five pounds, the one half to the king, the other to him that will sue for the same."

At common law, if the freehold came in question, the sheriff's power ceased, and the party was without remedy. But the statute of Westm. II. c. 2, (13 Ed. I.) gives the landlord a *pone* to remove the cause into the king's courts, where that plea may be tried, and the landlord be established in the possession of his services, and still have the pledges *de retorno habendo* retained for him.

At common law, also, the pledges were bound only for prosecuting, and to answer *pro falso clamore*; but by the statute of Westm. II. c. 2, they are bound, not only for prosecuting, but also to make return of things distrained.

Whether the replevin be by plaint or writ, the sheriff, before he grants the one, or executes the other, ought to

take from the plaintiff pledges *de pros'*, and pledges *de retorno habendo*; and if the pledges are insufficient, the sheriff is made answerable for their insufficiency.

And the pledges *pro retorno habendo* may be by bond even of the plaintiff in replevin himself; the condition of which is, not only that the plaintiff will appear at the next County Court, and then and there shall prosecute the suit in replevin with effect, but also that he will make return of the beasts or goods, if return thereof be adjudged by law, and also to save harmless and indemnify the sheriff for delivery of the said beasts or goods; for the sheriff, being answerable for the sufficiency of the pledges, may take the security as he pleases, since it is at his own peril.

For the greater security of persons distraining *for rent* in arrear, it is provided by the 11 Geo. II. c. 19, sec. 23, that sheriffs and other officers having authority to grant replevins *shall*, in every replevin of a distress *for rent*, take, *in their own names*, from the plaintiff and two sureties, a bond in double the value of the goods distrained (such value to be ascertained by the oath of one or more witnesses not interested, which oath the person granting such replevin is to administer), and conditioned for prosecuting the suit with *effect* and without delay, and for returning the goods, in case a return shall be awarded, before any deliverance be made of the distress.

And, to prosecute with effect, the plaintiff must not only proceed to a decision of the suit, but must have success in it, or he does nothing; and it is not a completion of the condition to have levied a plaint in the County Court; for the word extends to all the proceedings, from the original to the conclusion of the action, as well in the Court below as in the superior Court.

The sheriff having taken pledges from the plaintiff in replevin, he ought forthwith to make deliverance of the goods or cattle distrained; but if the distress was taken within a liberty, and impounded there, the sheriff ought first to issue his warrant to the bailiff of the liberty having return of writs, to make deliverance.

If the distress be drawn into a house, castle, or other strong hold, the sheriff or his bailiff, after demand made for deliverance of the distress, may break open the house or castle to replevy them.

If the replevin be executed, and the deliverance made, where it is by plaint, the bailiff, at the time he makes deliverance, ought also to attach the defendant by his goods, to make him appear at the next court day: for in this ac-

tion the attachment is the first process; because the replevin complains of a tortuous taking, which is in nature of a trespass.

Where the replevin is by writ, and the sheriff executes it before an *alias* or *pluries* comes to his hands, the sheriff may hold plea of it in his County Court; but either party may remove it by *pone* or *recordari* into the Courts above, the plaintiff without cause, and the defendant upon cause shewn.

The mode of proceeding to be adopted on the party's entering into a replevin bond, is, to take two sufficient housekeepers of the city or county where the distress was made, to the sheriff's office of that city or county, or to the office of his deputy; and upon the bond being filled up, let it be executed by the plaintiff and his two sureties. A precept or warrant, and summons, is then made out; upon which the officer will replevy the goods, if found in the county. When the goods have been replevied and delivered to the plaintiff, he must, according to the terms of his bond, levy his plaint at the next County Court, and prosecute his suit with effect, and without delay. If he do not levy his plaint, at the next County Court, or if he make default in any subsequent part of the proceedings, either in the Court below, or in the Court above, the defendant may take an assignment of the bond, and having got it stamped, may proceed thereon against the plaintiff and his bonds. The form of the plaint has been given.

If the sheriff do not execute the replevin, the cause being removed to the Court above, a writ of *alias*, and after that a *pluries*, will issue to compel him; and if the goods are eloigned, a writ of *withernam* follows.

This word is derived from the Saxon words, *weder* (other), and *naam* (distress), signifying another distress, instead of the former, which was eloigned. *Vetitum namium* signifies a forbidden distress; and therefore, though a distress were originally lawful, yet if it be detained against the replevin, it is *vetitum namium*, and unlawful.

This writ lies where a man takes the goods or cattle of another man, and the party sues a replevin by writ, and an *alias* and *pluries*, and upon the *pluries* the sheriff returns that the cattle or goods are eloigned, &c. then this writ of *withernam* issues out of the Court where the *pluries* is returned.

The writ of *withernam* ought to rehearse the cause which the sheriff returns for which he cannot replevy; for there

are very many causes, that he may return upon the *pluries*, why he cannot replevy.

And if he return upon the *pluries* replevin, that he hath sent unto the bailiff of the liberty who hath return of writs, and that the bailiff hath given answer, that he cannot execute the writ, because he cannot have a view of the cattle or goods which were taken; then the Court in which such return is made will award a writ of *withernam*, directed to the sheriff, and the sheriff must thereupon make his precept unto the bailiff of the liberty; and if the bailiff of the liberty do not make a return thereof unto the sheriff, then the sheriff shall return the whole matter into Court, which thereupon will award a writ of *withernam*, and a *non omittas* with the same.

And if a man's cattle or goods be distrained, and he sue a replevin, for which the sheriff makes a precept to the bailiff to replevy, and the bailiff return at the next County Court, that he cannot replevy the cattle or goods because they are eloigned, or that he cannot have a view of the cattle or goods; then the sheriff, in the same County Court, ought to make inquiry if it be true which is returned; and if it be so found by the jury, then the sheriff *ex officio* shall make a precept unto his bailiffs in the nature of a *withernam*, to take as many cattle or goods of the party.

And if the sheriff make such precept, to take the other's cattle or goods in *withernam*, and the bailiff will not execute the writ, then the party may have a special writ out of Chancery, directed to the sheriff, commanding him to do *withernam*, and to do execution of the first judgment.

By this writ it appears, that the sheriff may award *withernam*, on replevin sued by plaint, if it be found by inquest in the county, that the cattle or goods are eloigned, according to the bailiff's return, &c. But upon the *withernam* awarded in the county, if the bailiff return that the other party hath not any thing, &c. he shall have an *alias* and a *pluries*, and so infinite; and he hath no other remedy there, because no *capias* lies but in the King's Courts.

But upon a *withernam* returned in the King's Bench or Common Pleas, if the sheriff return that the party hath not any thing, &c. there a *capias* shall be awarded against him, and *exigent* and process of outlawry.

Where the sheriff in his county levies goods of the plaintiff in *withernam*, after a return hath been awarded

on a nonsuit, if he do not deliver them to the defendant, he shall have an action against the sheriff.

If, on the *withernam*, the sheriff return that the defendant hath no goods, a *capias* issues, and process of outlawry. And where the *retorno habendo* is awarded for the defendant, *withernam*, *capias*, and process of outlawry lies against the plaintiff.

If the sheriff return that the distress is eloigned, so that he cannot deliver them upon the replevin, or upon the *retorno habendo*, the *withernam* goes; for where it appears there cannot be a delivery made of the same, the law commands an equivalent *secundum legem talionis*.

In a replevin at the *pluries* returnable, if the sheriff return *quod averia elongata sunt*, &c. and the defendant appear, and plead that he did not distrain them, the plaintiff shall not have *withernam*. And so if the defendant, at the *pluries* return, appear and plead that the cattle were dead in the default of the plaintiff, the plaintiff shall not have *withernam*. For if he did not take them, or if the cattle be dead by the default of the plaintiff, then, *secundum legem talionis*, he ought not to have the defendant's cattle; and therefore, while this is in issue, no *withernam* ought to be awarded.

And if in replevin *withernam* is awarded, and afterwards the defendant avows the taking as his proper goods, or for a heriot, or denies the taking; the plaintiff shall gage deliverance of the *withernam*, for the *withernam* ought not to have been awarded. But the defendant shall not gage deliverance of the goods taken, since he claims them as his own. And though the defendant might have come *in pais*, and claimed property, yet, whenever he claims, it is sufficient to stop the deliverance.

If *withernam* be taken, and afterwards the defendant comes into Court, and makes conusance as bailiff to J. S. and prays aid of him, who joins in aid, the defendant shall have deliverance of the beasts or goods *in withernam*: for it belongs to the landlord to make deliverance of the first beasts or goods, and not the bailiff; because the bailiff took them only as a servant, and therefore his goods ought not to be taken as a compensation for the master's not restoring the distress.

The defendant in some cases shall have a *withernam* against the plaintiff; as, if the defendant has a return awarded for him, and he sues a writ *de retorno habendo*, and the sheriff return upon the *pluries*, *quod averia*

elongata sunt, &c. he shall have a *scire facias* against the pledges, according to the statute of Westm. II. c. 2; and if they have nothing, then he shall have *withernam* against the plaintiff, of the plaintiff's goods.

If the *withernam* be awarded against the defendant, on behalf of the plaintiff, on *mesne* process, the sheriff may take the goods of the defendant to any value, as a pain to make him appear. And when the defendant comes in, he will be fined in Court, and committed till he has paid that fine, and gaged deliverance of the goods; and then he can have his own goods restored that were taken in *withernam*, and interplead with the plaintiff.

But the defendant may plead *non cepit*, after the return of *elongata*; and the reason is, because the sheriff must either return *deliberari feci*, *elongata*, or that no person came to shew him the goods; but he cannot return that they were not taken, for that goes to the point of the writ, which the defendant is to falsify, and not the sheriff. The sheriff must necessarily return *elongata*, where he cannot make deliverance; and therefore it should seem that no action lies against the sheriff for such return as being false. And for the same reason, because the return of *elongata* was unavoidable, it shall not exclude the defendant from pleading *non cepit*.

If, on the *withernam* awarded against the defendant, *nulla bona* be returned, a *capias* issues against the defendant; and on that *capias*, if the defendant be taken, he shall be in custody until he has paid the fine, and likewise gaged deliverance; and if he be not taken, they proceed to process of outlawry.

If the replevin be either by plaint or by writ, and the defendant claims property, the sheriff's power to replevy is at a stop; because, the defendant claiming the goods as his own, the sheriff cannot re-deliver that property to the plaintiff which is claimed by the defendant; and therefore, if the replevin be by plaint, the jurisdiction is at an end by such claim, till the plaintiff purchases the writ *de proprietate probandâ*.

On the purchasing of this writ, an inquest of office is held, of which notice is to be given to the parties; and if on such inquest the property be found for the plaintiff, the sheriff is to make deliverance. But the defendant may remove it by *recordari*, and put in his plea of property above, and it shall be determined by a verdict But if the inquest of office find for the defendant, there is an end of the replevin by plaint, because the property is

found for the defendant, and so no re-deliverance can be made by the sheriff. But the plaintiff may bring a new replevin by writ; for what is done on the plaint is no bar, nor has it any concern with the proceedings upon the writ.

If the replevin were by original writ, and the defendant claims property, the sheriff cannot make deliverance any more than he could upon the plaint; and therefore the sheriff in such case returns such claim of property on the *causam nobis significes* (on the *alias* or *pluries* replevin), as a cause why he cannot execute the writ; and on this return of the sheriff, the writ *de proprietate probandâ* issues, that the plaintiff may not want his goods in the meantime; and, if the property be found for the plaintiff, orders a re-deliverance to the plaintiff, and gives the defendant a day in Court. And the plaintiff may not only declare on the unjust caption, but on the subsequent injustice of the defendant, in claiming the goods as his own; and here the defendant may likewise set up his claim of property, and try it by verdict, where the matter will be determined under peril of an attaint. But if this claim be found against the defendant on the inquest of office below, he is subject to a fine for his false claim of property, whereby he has stopped the course of replevin by hindrance of the deliverance of the goods, which is a contempt of the Court, and subjects him to a fine; as likewise to damages to the party, who wants his goods in the meantime. The defendant must appear in proper person to answer his fine to the king, but after payment of the fine he may appear by attorney; but until payment of the fine, he must plead in person.

But if the verdict be found for the defendant in the writ *de proprietate probandâ*, there is an end of the replevin, as well by writ as by plaint; for the sheriff is not, by the writ *de proprietate probandâ* to deliver the goods to the plaintiff, unless the jury find them to be the plaintiff's. And if the defendant has the goods, and possesses them as his own, they cannot proceed in an action, which supposes the goods to be re-delivered to the plaintiff. But if the plaintiff has any right to them, since the possession by the inquest is established on the side of the defendant, the plaintiff cannot get back his possession of the goods until he has established his right in an action of law for the same; and therefore he may bring his action of detinue, trover, or trespass, for recovering the goods, but cannot continue this action, whereby the possession should be delivered to him.

A bailiff cannot claim property in the Court *below*, when the sheriff comes to make replevin; because, being only servant to another, in whose right he has taken the goods, he cannot say they are his own, and therefore cannot hinder the sheriff from delivering the goods according to the command of the writ, as the proprietor might. For though a man by claiming property may prevent his own goods being delivered, yet he cannot hinder other people's goods, because the sheriff cannot hear any stranger interpose against his obeying the king's writ. But the owner himself shews a just cause why the goods should not be delivered until further inquiry. Yet the bailiff in the Court *above* may plead property in a stranger; for this is a sufficient reason to excuse him from damages, since he has not taken the plaintiff's goods from him.

If the defendant claims property in replevin, the plaintiff may have this writ without continuance of the replevin, though it be two or three years after, because by the claim of property the first suit is determined.

If the party who hath the goods claim property, the sheriff cannot determine it without this writ; and then, if the property be found for the party claiming it, it is but an inquest of office, and the party who made the plaint may afterwards sue a writ of replevin, to which property may be again pleaded.

If the plaintiff has property, and omits to claim it before the sheriff, he may, notwithstanding, plead property in himself or a stranger, either in abatement or in bar; though it was formerly held, that property in a stranger could only be pleaded in abatement.

Replevin lies as well for goods in which I have only a *qualified* property, as for those in which I have the *absolute* property. As, if goods be in my hands in order to be delivered over to J. S., and J. N. takes them from me, I may have a replevin against J. N. to bring back these goods into my own possession, because I have a right to the possession of these against every body but J. S.; and therefore as J. N. is a trespasser for violating that possession, so I may qualify that *tort* he hath done, by bringing the replevin, which complains of the unjust taking, and that J. N. detains them *contra vadios et plegios*.

So it is, if cattle be farmed to me to manure my land: if they be taken out of my custody, I may bring replevin for them; because during the term I ought to have the use of them, and therefore the caption and detention of them by any person is unlawful, which is the injury com-

plained of in the replevin; or I may have, in this case, a special replevin, setting forth my special property.

If A. take my goods by the command of B., I may take the replevin against both; because in trespass both are principals, and equally guilty of the unjust caption and unjust detention.

Parties who have a joint interest, may join in this action.

But several persons cannot join in one replevin for *several* chattels, where the property of them is several; because, where several distresses are taken by the same person of different men, each hath a several and particular injury done him, if the distresses be unlawful; and therefore they cannot jointly complain of an unjust caption and detention, where the property is several.

A replevin doth not lie against the king, where the king is party, nor where the taking is in right of the king; and if such replevin should be granted, the sheriff ought to forbear to execute it, when he is informed the king is party.

Executors may have replevin for the goods of the testator taken in his life-time; because the general property is in the executors, and the possession ought to follow that.

If the goods of a feme sole be taken, and she marry, the husband alone can sue the replevin, because the property is transferred by the marriage, and vested absolutely in the husband.

Or, the husband and wife may join. But if the goods are taken *after* marriage, husband and wife ought not to join; but if they do join, and after verdict a motion is made on this ground in arrest of judgment, it will be presumed that the husband and wife were jointly possessed of the goods before marriage, in which case they might join.

In replevin for a sow and pigs, the defendant, as to the sow, avows damage-feasant; and for the pigs, pleads *non cepit*. The jury found for the defendant as to the sow; and for the pigs, they found that the sow farrowed them after she was distrained, and in the possession of the defendant. The plaintiff had damages for the pigs, on this plea of *non cepit;* because the pigs were taken by the defendant as well as the sow, though they were not damage-feasant, and therefore the defendant should have set forth the special matter as to the pigs.

No replevin lies for charters relating to the inheritance,

because the charters are reckoned part thereof, and as such descend with it to the heir.

A replevin doth not lie for goods taken in foreign parts, though afterwards brought into the realm; because such a foreign caption might have been justifiable according to the law and custom of the place where it was made, though it may be illegal by our law.

Where the goods are distrained, and at the end of five days appraised, but not sold, the act of appraisement does not take away the plaintiff's right to replevy them.

If a distress be taken in one county, and carried into another, the plaintiff may have replevin in either county, because it is a caption in every county into which the distress is taken by the defendant.

Avowries.—Having considered the replevin, and the writ that issues upon proper returns of the sheriff, we come now to the avowry.

The *avowry* is the taking up the defence of such distress. It acknowledges the defence taken, but avoids the injustice of the caption complained of, and sets forth a good cause for taking such distress, in order to have it returned again to the defendant. So that in replevin both parties are *actors;* the plaintiff, to have damages for the taking and detaining his goods; and the avowant, to have return of the plaintiff's beasts, and damages.

Avowries are either for rents, services, heriots, &c. or for damage-feasant

At common law, the landlord was obliged to avow upon his real tenant, which, as the ancient law stood, was easily done, because the tenant paid fines on every alienation, and the alienee was presented by the next homage. But when these small fines for alienation were not gathered, nor the Courts regularly kept, landlords were at a loss to find their real tenants, and consequently to know whom to avow upon. To remedy this, the 21 Hen. VIII. c. 19, sec. 3, was made; by which the landlord may distrain on the lands holden by him, and avow as in lands within his fee or seignory, alleging in the avowry the lands to be holden of him, without naming any certain person or tenant.

Upon this act it hath been held, that though the words are, that if the landlord distrain on the lands holden of him, yet if the landlord come to distrain, and the tenant drive the beasts which were once *in view* of the landlord, off the land, or out of the seignory, and the landlord pursues and distrains them out of his fee, yet he may avow

upon this act; because the distress, in construction of law, is taken upon the land, by reason of the view and fresh suit of the landlord.

By the 11 Geo. II. c. 19, sec. 22, which recites, that "great difficulties often *arise* in making avowries or cognizance upon distresses for rent, quit-rents, reliefs, heriots, and other services," it is enacted, "That it shall be lawful for all defendants in replevin to avow or make conusance *generally*, that the plaintiff in replevin, or other tenant of the lands and tenements whereon the distress was made, enjoyed the same under a grant or demise at such a certain rent during the time wherein the rent distrained for incurred, which rent was then, and still remains due; or that the place where the distress was taken was parcel of such certain tenements, held of such honor, lordship, or manor, for which tenements the rent, relief, heriot, or other service distrained, was, at the time of such distress, and still remains due, without further setting forth the grant, tenure, demise, or title of the landlord, lessor, or owner of such manor."

It is not necessary, in an avowry for rent under this statute, to aver that the rent continued in arrear at the time of making the avowry.

Avowries and cognizances for distress, damage-feasant, are not within this statute.

Nor avowries for heriot, custom, or for rent-charge.

A general avowry under this statute may be made for increased rent, made payable for land broke up during a certain period of the term.

If the grantee of a rent-charge avows for his rent, he must also allege a seisin in fee-simple in his grantor of the lands out of which the rent issues; for this being a rent not arising from any tenure, doth not turn on the rule that governs the feudal services.

If tenant in fee leases for years rendering rent, and brings an action of debt for the arrear of rent, he need not allege any seisin in fee in his declaration; because the action of debt arises from the contract of the parties, and was not substituted by the feudal law in the place of forfeiture; and therefore, in debt for rent, the lessor only declares *quod cum demisit* such lands to A. for such a term, rendering such certain rents, by virtue of which demise A. entered, &c.

But where, in debt for rent, the plaintiff sues *as assignee of the reversion and rent*, it seems by the precedent that he must allege a seisin in fee in the lessor; because, since

the plaintiff did not demise himself, he must shew who did, and that the reversion came by such assignment to him, in order to make his title to the action. For it seems absurd that the plaintiff should say, that the first lessor granted the reversion to him, without first shewing that he had it in himself. Hence it should seem to be necessary, even in debt for rent, to allege in this case a seisin in fee in the first lessor; for he doth not come in as a representative of the contractor, but as assignee of the reversion, and therefore must shew the particular estate of the reversioner.

In avowries there must be always a place *certain* mentioned where the caption was; as the avowant must admit the caption to be in the place mentioned in the declaration, in order to shew the cause of taking it there; for if the avowant should lay the taking in another place than the plaintiff hath done, without traversing the place mentioned in the declaration, this would be altogether bad; because the avowant neither confesses and avoids, nor traverses the declaration, and therefore such plea is nugatory, and not to the purpose.

But if the defendant avows the caption in parcel of the place mentioned in the declaration, without giving it a particular name or description, no objection can be taken to it, unless upon a special demurrer.

Where the defendant avows in a place which, *on the face of the avowry*, appears to be a different one from the place mentioned in the declaration, it must be traversed. As where the taking is alleged in the declaration to be at the pit of *St. Martin's in the Fields*, in a certain place *there*, called *Maiden-lane*, and the defendant in his avowry says, that the said place contains one messuage in *the parish of St. Paul's, Covent Garden;* the avowry is ill, without a traverse of the place in the declaration.

In an avowry by husband and wife, in right of his wife, for arrears of a rent-charge incurred before the coverture, the avowry concludes, "*and because at Michaelmas, &c. £20 was in arrear and not paid to the husband and wife, he distrained, and avows, &c.*" It was objected, that, by his own shewing, the arrears were not due to himself and his wife, and therefore the avowry was ill; but the objection was overruled; because if he had said, "*for £20 arrear he distrained,*" that had been good, and the rest was held surplusage.

If one avows as administrator for arrears of a rent-charge, where he may claim the arrears in his own right, and it appears that avowry is not so framed as to entitle

him to the arrears as administrator, yet the avowry is good; because where there are two titles set forth in the avowry, and only one sufficiently alleged, that one title only gives him as good a right to the rent as both, and therefore he ought to recover, and the avowry as administrator shall be surplusage. As if a rent-charge be granted to the husband and wife during the life of the wife, and the husband dies, and the wife avows as administratrix to her husband, where she might avow *jure proprio*, yet, she having a title to it in her own right by the grant, the avowry is good.

If a man avows for an entire rent, where it appears that he hath title only to a moiety of it, the avowant cannot recover; because he hath not avowed according to the circumstances of his case, and therefore cannot make out his title as he hath laid it. Suppose A. and B. were joint-tenants of a rent, and A. distrains and avows for the whole, this avowry is bad; for if it should stand, and A. should recover his moiety, then there must be two suits for one joint demand, which would be vexatious and absurd. And in this case the avowry and action of debt stand on the same reason, and agree.

So likewise coparceners must join in avowry; therefore if one joint-tenant or coparcener distrain alone, he must avow in his own right and as bailiff to the other.

Where the avowry is for parcel of a rent or penalty only, it ought to shew that the residue has been satisfied or discharged, otherwise it will be bad on demurrer.

If the defendant avow for so much rent arrear, part whereof is not due at the time of the distress, and enters judgment for the whole, it will be error; but it may be cured before judgment, by abating the avowry as to the part not as yet due.

If a tenant hold several parcels of land of the same landlord, under distinct demises, the landlord cannot avow taking one entire distress for the rent of all.

A. and B. were tenants in common in fee of land; A. granted a lease for years of his moiety to C., reserving a rent; C. assigned the lease to B.; it was held that A. might distrain upon B. for rent arrear, and avow for taking the distress in any part of the land.

An avowry justifying the taking a distress for rent arrear for ready-furnished lodgings, is good, it having been held that a landlord is entitled to distrain for the rent of a ready-furnished lodging.

If executors avow on the 32 Hen. III. c. 37, for the ar-

rears of rent in fee granted to the testator, they must shew that the lands liable to the rent-charge continue in the hands of the tenant or purchaser in whose time the rent sued for incurred.

To a declaration in replevin for taking the plaintiff's goods, the defendant made cognizance as bailiff of an executor under the above statute for arrears of rent incurred in the life-time of the testator. It was held, that such avowry need not set out the title of the testator, nor shew that the executrix was entitled to distrain under that statute, and that at all events it could not be objected o after verdict.

An avowry by one of several co-heirs in gavelkind in his own right, with a cognizance as bailiff of the other co-heirs is sufficient, without avowing an authority to distrain from the other co-heirs.

It is sufficient for the defendant in his cognizance to say generally, "as bailiff of J. S.," without shewing his authority; and a subsequent agreement by J. S. to the distress amounts to an authority, as much as if he had previously directed the defendant to distrain.

If defendant makes cognizance as bailiff to the king, he need not allege a patent.

*Or to a corporation, he need not allege a deed, or say it was by their command.

Joint-tenants and coparceners must join in an avowry, and a cognizance as their bailiff should be for the entire rent.

Tenants in common must sever, and the avowry of each must be *de unâ medietate* of the whole rent, and not of a certain sum which amounts to a moiety; and when the action is against one of several tenants in common, he avows for his own proportion, and makes cognizance as bailiff of his companion for the residue. Or he may avow for his undivided share of the rent.

If three tenants in common distrain thirty beasts, they should avow separately for ten.

Where two persons are defendants in replevin, they cannot make several avowries in their own right for distinct matters: thus, if one avow for rent-service, and the other for rent-charge, both the avowries shall abate; for the court would be in doubt to which of them return should be awarded.

In an avowry for heriots, you cannot avow for a heriot generally, but you must avow for the best beasts, or the two best beasts of the tenant, as the case is; for

otherwise the plaintiff would be ousted of his plea in bar, that the tenant left no beasts.

The avowant must justify and shew a good title *in omnibus*, that it may appear that he had authority to distrain, before he is entitled to a return.

Proof of payment of rent to the avowant is *primâ facie* evidence that he is owner of the land; but this may be rebutted, by shewing it was paid under circumstances.

If a termor distrain the beasts of another damage feasant, and the owner of the beasts bring his writ of trespass or replevin, it is not sufficient for the termor in his justification or avowry to say *quod possessionatus fuit* generally, because where the termor takes the beast themselves for the damages, he must set forth by what right or title he took them; for he cannot seize another's beasts for any damages done to that which doth not appear to be his rightful possession or property; and therefore the termor, to justify this caption in trespass, or in his avowry, where the proprietor seeks a restitution of his beasts by replevin, must allege the seisin in fee in his lessor, and so derive a title to himself.

Where the action is transitory (as trespass for taking goods) the plaintiff is foreclosed to pretend a right to the place. Nor can it be contested on the evidence who had the right; therefore, possession is justification enough for the defendant, and it is sufficient for him to plead, that he was possessed of the place called Blackacre, and that he took the goods damage feasant there without shewing any title. But it is otherwise in trespass *quare clausum fregit*, because the plaintiff claims the close, and the right may be contested.

But if the avowant for damage feasant alleges the *locus in quo* to be his own and free tenement, that is sufficient, without alleging the seisin in fee, tail, or for life.

One tenant in common cannot avow alone for taking cattle damage feasant; but he ought also to make cognizance as bailiff of his companion.

An avowry, damage feasant in a place where the avowant had a right of common, must allege special damage, that the avowant could not enjoy his common in so ample and beneficial a manner.

Writ of Recaption.—Where the defendant hath judgment upon his avowry in replevin, he shall have restitution of the goods, to detain them as a pledge until the rent or duty for which they were taken be paid or satisfied: and since he hath got security to have return upon making

out the justice of his first caption, it is highly reasonable, that, pending that suit, the tenant should be protected from farther distresses for the same rent or cause for which the first distress was taken. For this purpose the writ of recaption was framed; in which, if the defendant was convicted, he shall be fined to the king; because, by the second caption, the defendant takes upon him to determine the justice and legality of the first, while that very point is under the consideration of the court of justice in which the replevin depends. For if the first distress were lawful, he shall have return of it, and therefore the second is unreasonable; if the first were unlawful, much more so is the second taking for the same cause: so that the recaption lies even where the cause of the first caption was just.

But if A. distrain beasts damage feasant, and, pending that suit, the same cattle, or other cattle of same proprietors, trespass on the soil of A., A. may distrain again pending the first suit; because each distress is for a *distinct* and *several* trespass or injury, for which A. is entitled to satisfaction. The restitution of the cattle for the first trespass will be no compensation for the second trespass, since A. cannot legally withhold them as a pledge for satisfaction of a second trespass, when the first is satisfied.

And if a plaint be removed out of the County Court into the Common Pleas by *pone* or *recordari*, and afterwards the plaintiff be nonsuit in the Common Pleas, before or after an avowry made; the landlord, after this nonsuit, may distrain again for the same cause, and the tenant shall not have a recaption, because there is not any plea depending; and yet the plaintiff may sue a writ of second deliverance upon the same record.

The writ of recaption being to prevent a second distress for the *same* rent or duty, it follows that the defendant cannot avow as in replevin, because the avowry is in order to have a return of the pledges; but in recaption, whether the first distress were just or unlawful, the defendant cannot have return of the goods under the notion of the pledge; for that were to invert the design of the law, by allowing the defendant a second distress, by judgment upon that very writ, which was framed to punish the person taking a second distress for the same thing.

In the writ, therefore, of recaption, the defendant must *justify* as in trespass; because, since he cannot avow the taking under the notion of a pledge for a rent or duty (inasmuch as he hath already a pledge for that, which will be returned to him, if in event of the suit in replevin the

rent appears to be in arrear), he must therefore be looked upon as a trespasser, unless he can justify the taking for *another* cause.

It is not necessary, to entitle a man to the writ of recaption, that the *same* beasts or goods be taken the second time which were first taken; but only that the beasts or goods of the *same* person were distrained for the *same rent* or duty

But if the landlord distrain the beasts or goods of his tenant for rent, and afterwards distrain the beasts or goods of J. S. a stranger, being on the land or premises, for the same rent; in this case no writ of recaption lies for this second distress;—not for the tenant, because the second distress is not of the tenant's beasts or goods; nor for J. S. because the beasts or goods of J. S. were not formerly taken; and therefore J. S. must take out an original replevin, or bring his action of trespass as he thinks fit.

Yet if the landlord distrain his tenant, and, pending that plea, command his servant to distrain the tenant again for the *same* rent, the tenant shall have a recaption against the landlord himself for the second distress. So if the servant had taken the second distress without the landlord's command; yet if the landlord had afterwards, by any subsequent act, agreed to the taking of the second distress, as by joining in *aid* with the servant to defend the justice of the caption, such subsequent agreement makes it a distress of the landlord, and to have been taken in his right *ab initio;* and a parol agreement of the landlord to the second distress is sufficient.

But if there be no such command or subsequent agreement of the landlord, the tenant shall have no recaption either against the landlord or the servant, though the servant make conusance of the second distress in right of his landlord, and for the same rent for which the landlord took the first distress; for the writ of recaption is to punish the second caption, only where it is wilfully made by the *same* person that made the first, or by another under his direction or authority; and it may be, that the landlord and his servant had not notice of each other's caption.

So that where there is no precedent command, nor a subsequent agreement of the landlord to the second caption, the tenant is left to his action of trespass against the servant; because the second caption is a violation of property, and unlawful, though the rent be in arrear; since the landlord, by the first distress, hath taken a pledge for

his rent, which will be returned to him, if, in the event of the suit in replevin, the tenant be found to be in arrear.

If the landlord distrain the goods of A. and B. for rent, and for the same rent distrain a second time the goods of A only, A. shall have a writ of recaption against the land lord; because there is a distress of A. already for that rent, which the landlord will have a return of, if the rent be found in arrear. But if the first distress had been only of A. the tenant, and the second distress had been the goods of A. and of B. a stranger, which they have in common, Fitzherbert makes a doubt whether A. in this case shall have a recaption, because of B.'s interest in the goods; for it is plain B. cannot join in the recaption, because his goods were never distrained before.

If the landlord distrain his tenant, and he replevy, and the landlord avow for rent, and the tenant plead *rien arrear*, or levied by distress, and pending this suit other rent becomes due, the landlord may distrain again the goods of the tenant for the last rent incurred, and no writ of recaption lies for the tenant; because these distresses are for two distinct causes. But if the tenant had pleaded to the avowry in the first replevin *hors de son fee*, and pending that suit the landlord had distrained again for another half year's rent, the tenant should have a writ of recaption, because, by the plea of *hors de son fee*, the landlord's title to the rent itself, and not to this or that particular arrear, is in dispute, and that title may be determined by the first caption; and therefore the second distress being unnecessary to try the title to the rent, the writ of recaption lies to prevent it, and punish the landlord for taking the second distress, and to protect the tenant from such oppression.

And this writ of recaption lies for the tenant before avowry made by the landlord in the first replevin; for otherwise the remedy would not be adequate, because the landlord might harass the tenant by several distresses, before the landlord by the rules of the Court could be compelled to avow. But then the tenant must, in his declaration on the recaption, aver that the second distress was taken for the same cause as the first; otherwise the tenant fails in making out to the Court his title to the writ of recaption, and consequently cannot punish the landlord for taking the second distress.

For Illegal Distress, otherwise than by Replevin.

Where the tenant's goods are unlawfully distrained for

rent, or pretended rent, the tenant may rescue them. But if the goods or cattle are once impounded, even though taken without any cause, the owner cannot by law break the pound, and take them out; for they are then in the custody of the law.

The tenant may rescue also, if the landlord take goods which are privileged by law, as where goods are so privileged for the benefit of trade, or beasts of the plough, where other things on the premises might be taken; but in such cases the rescue must be made before impounding.

If a person distrain goods, and do not declare the cause or reason for so doing, the owner may rescue them.

If cattle distrained go into the house of the owner, and he, on demand, refuse delivery, it will be a rescue; but if he who takes the distress gets the possession, the re-delivery is no rescue.

By 2 W. & M. c. 5, on a *pound breach*, or *rescue* of goods distrained for rent, the person grieved may, by special action on the case, recover treble damages and costs of suit, against the offender or owner of the goods, if they be found to have come to his use or possession.

And it has been determined that the word *treble* shall be referred as well to the word *costs* as to the word *damages*, and therefore that the costs shall be trebled as well as the damages.

If the tenant tender the rent before distress, which is refused, and the landlord afterwards distrain, or the cattle or goods of a stranger be taken, the tenant or owner may lawfully rescue the goods or cattle.

If a person distrain cattle, and pound them in another man's close, with his consent, and the owner of the cattle take them out; in this case he that made the distress shall have an action for *pound breach*; and the owner of the close, an action of *trespass* for breaking his close.

If a person break the pound, and take out goods, he that distrains may have an action against the party for *pound breach*, and may also take the goods again wheresoever he finds them, and put them in the pound again.

Rescue must be made by the tenant himself, or the owner of the goods, and not by a stranger; and if the goods of two persons are taken, each can only rescue his own. But the rescue may be made by an authorised agent of the owner or tenant.

No rescue can be made after goods are impounded.

But if the cattle of a commoner be wrongfully taken as damage feasant, and impounded, and he make fresh pur-

suit after them, and find them in an open pound, unlocked, it is said he may retake.

There can be no rescue unless the distrainor have possession of the goods; and if a party be prevented from distraining, he shall not have a writ of rescous, but an action on the case.

And if the distrainor quit possession of the goods, the re-taking of them is not a rescue.

Where a landlord is guilty of an illegal, irregular, or excessive distress; or, if having lawfully taken a distress, he abuse it, the tenant may bring either an action of trespass, or an action on the case, according to the nature of the grievance.

The action of trespass lies for an unlawful taking; as where the distress is made at night, or where beasts of the plough are taken when other sufficient distress might be had. Also, if outward doors be broken open, or inclosures thrown down. But if an outer door be open, it will be lawful to break open any inner door.

In an action of trespass, where the trespass was for breaking and entering the plaintiff's house and taking his goods, and the case in evidence was, that the defendant, having with him a constable, had entered the plaintiff's house to make a distress for rent; that, after he had told his business, and begun to make an inventory, the plaintiff's wife tore his paper, beat him and the constable out, and then blocked up the door; that, about an hour after, the defendant with several others returned, and demanded admittance, which being refused, he broke open the doors; it was ruled by the Court, that the distress having been lawfully begun and not deserted, but the defendant compelled to quit it by violence, this was a re-continuance of the first taking, and so was lawful, though he could not, when he first came, have so broken open the doors.

To avoid the risk of a rescue turning out to be illegal, it is much safer for a party wrongfully distrained upon, either to replevy, or to bring an action on the case, or an action of trespass.

By the 3 W. &. M. sess. 1. c. 5, sec. 5, it is enacted, that in case any distress and sale as aforesaid shall be made by virtue or colour of that Act, for rent pretended to be in arrear and due, where in truth no rent is in arrear or due to the person or persons distraining, or to him or them in whose name or names or right such distress shall be taken as aforesaid, that then the owner of such goods or chattels distrained and sold as aforesaid, his executors or adminis-

trators, shall and may, by action of trespass, or upon the case, to be brought against the person so distraining, or any or either of them, his or their executors or administrators, recover double the value of the goods or chattels so distrained and sold, together with full costs of suit.

The tenant may pay the sum demanded, in order to redeem his goods, and then bring trover for the unlawful taking.

And in such action it need not be found in a special verdict that the goods were sold with the concurrence of the sheriff as well as the constable; that they were sold for the best price that could be gotten; that the bailiff had direction to sell the goods; that the notice (having been given to the owner of the goods) was left at the mansion-house.

For goods sold before the five days allowed to replevy have expired, trover will not lie, but a special action for the irregularity.

An action of trespass will not lie against a pound-keeper for merely receiving the distress; unless he go beyond his duty and assent to it.

Where a landlord takes an excessive distress, trespass will not lie; but the remedy is by an action on the case, given to the tenant by the Statute of Marlbridge (52 Hen. III. c. 4), wherein, amongst other things, it is enacted, "that distress shall be reasonable; and he that takes great and unreasonable distresses shall be grievously amerced for the excess of such distress."

In bringing this action, it is not necessary to prove malice; it will be enough to shew that the goods were considerably more than what ought to have been taken. But where a landlord commits a small excess, the action cannot be maintained; or where there is only one article, which is very disproportionate to the rent due, and the landlord would be without his remedy unless he distrained that, the action will not lie.

Landlords have another protection afforded them by the 11 Geo. II. c. 19, sec. 19, which enacts, that where any distress shall be made for any rent justly due, and any irregularity or unlawful act shall be afterwards done by the party distraining, or his agent, the distress shall not be deemed unlawful, nor the distrainor a trespasser *ab initio;* but the party grieved may recover satisfaction for the special damage, in an action of trespass, or on the case, at the election of the plaintiff; and if he recover, he shall have full costs: provided, however, that no such tenant or

lessee shall recover in such action, if tender of amends have been made before action brought.

Therefore trespass will not lie for an irregular distress, where the irregularity complained of is not in itself an act of trespass, but consists merely in the omission of some of the forms required in conducting the distress, such as procuring goods to be appraised before they are sold. The true construction of the provision in the Act, that the party may recover a compensation for the special damage he sustains by an irregular distress "in an action of trespass or on the case," is, that he must bring trespass, if the irregularity be in the nature of an act of trespass, and case, if it be in itself the subject matter of an action on the case.

But, by sec. 20, no tenant shall recover in such action, if tender of amends have been made before the action brought; and by sec. 21, the defendant in such action may plead the general issue, and give the special matter in evidence.

Of Criminal Acts committed in the respective characters of Landlord and Tenant.

By the 7 and 8 Geo. IV. c. 19, sec. 45, it is enacted, That if any person shall steal any chattel or fixture let to be used by him or her in or with any house or lodging, whether the contract shall have been entered into by him or her, or by her husband, or by any person on behalf of him or her, or her husband, every such offender shall be guilty of felony, and shall be liable to be punished in the same manner as in the case of simple larceny; and in every such case of stealing any chattel, it shall be lawful to prefer an indictment in the common form as for larceny; and in every such case of stealing any fixture, to prefer an indictment in the same form as if the offender were not a tenant or lodger, and in either case to lay the property in the owner or person letting to hire.

If a landlord enter with force to distrain for rent; or if, upon the expiration of the tenant's interest, the landlord enter upon him, and dispossess him with a strong hand; the landlord will, in either case, subject himself to answer criminally for a *forcible entry*. And, on the other hand, if the tenant resist with force a distress for rent; or if, his term being expired, he keep possession of the premises by force of arms, or by intimidation, although no one attempt to enter, he will be guilty of a *forcible detainer*.

By the common law, a man disseised of lands or tenements might legally regain possession by force, unless his right of entry was gone by neglecting to enter in proper time; but, as this often gave occasion for serious disturbances of the public peace, it was enacted by the 5 Rich. II. st. I. c. 8, that all forcible entries should be punished with imprisonment and ransom at the king's will. And, by the several statutes of 15 Rich. II. c. 2; 8 Hen. VI. c. 9; 31 Eliz. c. 11; and 21 Jac. I. c. 15, upon any forcible entry, or forcible detainer after peaceable entry, into any lands or benefices of the church, one or more justices of the peace, taking sufficient power of the county, may go to the place, and there record the force upon his own view, as in case of riots; and, upon such conviction, may commit the offender to gaol, till he make fine and ransom to the king. And moreover, the justice or justices have power to summon a jury to try the forcible entry or detainer complained of; and if the same be found by that jury, then, besides the fine on the offender, the justice shall make restitution by the sheriff of the possession, without inquiring into the merits of the title; for the force is the only thing to be tried, punished, and remedied by them: and the same may be done by indictment at the general sessions.

But this provision does not extend to such as endeavour to maintain possession by force, where they themselves or their ancestors have been in the peaceable enjoyment of the lands and tenements for three years immediately preceding.

The law having provided a legal remedy for the recovery of rent by distress, if a landlord enter with force to distrain, he will be guilty of a forcible entry, and will be liable to a criminal prosecution. So also, in case the tenant hold over after the expiration of his lease, if the landlord enter by force to oust him, he will be guilty of a forcible entry; for in those cases the law has provided a remedy, and no man is to take the law into his own hands; but if the tenant resist the process of distress, or keep possession of the premises after the expiration of his term, he will be guilty of a forcible detainer, and will subject himself to a criminal prosecution accordingly.

Having shewn what a forcible entry and detainer are, it may not be amiss to consider the injuries done to parties by ouster or dispossession of the freehold, and the remedy which the law has provided for them: the doctrine upon this subject is very clearly laid down by Blackstone,

vol. iii. p. 167. Ouster, or dispossession, says he, is a wrong or injury that carries with it the amotion of possession; for thereby the wrong-doer gets into the actual occupation of the land or hereditament, and obliges him that hath a right to seek his legal remedy, in order to gain possession, and damages for the injury sustained. And such ouster, or dispossession, may either be of the freehold or of chattels real.

Ouster of the freehold is effected by one of the following methods: 1. Abatement; 2. Intrusion; 3. Disseisin; 4. Discontinuance; 5. Deforcement.

1. An *abatement* is where a man dies seised of an inheritance, and, before the heir or devisee enters, a stranger who has no right makes entry, and gets possession of the freehold; this entry of him is called an abatement, and he himself is denominated an abator.

2. The second species of injury by ouster, or amotion of possession from the freehold, is by *intrusion;* which is the entry of a stranger after a particular estate of freehold is determined, before him in remainder or reversion; and it happens where a tenant for a term of life dies, seised of certain lands and tenements, and a stranger enters thereon, after such death of the tenant, and before any entry of him in remainder or reversion. This entry and interposition of the stranger differs from an abatement in this—that an abatement is always to the prejudice of the heir, or immediate devisee; an intrusion is always to the prejudice of him in remainder or reversion. For example; if A. die seised of lands in fee-simple, and, before the entry of B. his heir, C. enter thereon, this is an abatement: but if A. be tenant for life, with remainder to B. in fee-simple, and, after the death of A., C. enters, this is an intrusion. Also, if A. be tenant for life in lease from B. or his ancestors, or be tenant by the courtesy, or in dower, the reversion being vested in B.; and, after the death of A., C. enters, and keeps B. out of possession; this is likewise an intrusion. So that an intrusion is always immediately consequent upon the determination of a particular estate; an abatement is always consequent upon the descent or devise of an estate in fee-simple. And in either case the injury is equally great to him whose possession is defeated by this unlawful occupancy.

3. The third species of injury by ouster, or privation of the freehold, is by *disseisin.* Disseisin is a wrong putting out of him that is seised of the freehold. It may be effected either in corporeal inheritances, or in incorporeal.

Disseisin of things corporeal, as of houses, lands, &c. must be by entry and actual dispossession of the freehold; as, if a man enter either by force or fraud into the house of another, and turn, or at least keep him or his servants out of possession. Disseisin of incorporeal hereditaments cannot be an actual dispossession; for the subject itself is neither capable of actual bodily possession, nor dispossession; but it depends on their respective natures and various kinds, being in general nothing more than a disturbance of the owner in the means of coming at or enjoying them.

These three species of injury—abatement, intrusion, and disseisin—are such wherein the entry of the tenant *ab initio*, as well as the continuance of his possession afterwards, is unlawful. But the two remaining species are where the entry of the tenant was at first lawful, but the wrong consists in the detaining of possession afterwards.

4. Such is the injury of *discontinuance;* which happens when he who hath an estate-tail, makes a larger estate of the lands than by law he is entitled to do; in which case the estate is good so far as his power extends who made it, but no farther. As if tenant in tail make a feoffment in fee-simple, or for the life of the feoffee or in tail; all which are beyond his power to make, for that by the common law extends no farther than to make a lease for his own life: in such case the entrance of the feoffee is lawful during the life of the feoffer; but if he retain the possession after the death of the feoffer, it is an injury which is termed a discontinuance; the ancient legal estate, which ought to have survived to the heir in tail, being gone, or at least suspended, and for a while discontinued.

5. The fifth and last species of injuries by ouster and privation of the freehold, where the entry of the present tenant or possessor was originally lawful, but his detainer is now become unlawful, is that by *deforcement*. This, in its most extensive sense, is *nomen generalissimum*, a much larger and more comprehensive expression than any of the former; signifying the holding of any lands or tenements to which another person hath a right. So that this includes as well an abatement, an intrusion, a disseisin, or a discontinuance, as any other species of wrong whatsoever, whereby he that hath right to the freehold is kept out of possession. But, as contradistinguished from the former, it is only such a detainer of the freehold from him that hath the right of property, but never had any possession under that right, as falls within none of the injuries which

we have before explained. As in case where a lord has a seignory, and lands escheat to him *propter defectum sanguinis*, but the seisin of the lands is withheld from him; here the injury is not *abatement*, for the right vests not in the lord as heir or devisee; nor is it *intrusion*, for it vests not in him who hath the remainder or reversion; nor is it a *disseisin*, for the lord was never seised; nor does it at all bear the nature of any species of *discontinuance;* but, being neither of these four, it is therefore a *deforcement*.

If a man marry a woman, and during the coverture is seised of lands, and aliene, and die; or is disseised, and die; or die in possession; and the alienee, disseisor, or heir, enter on the tenement, and do not assign the widow her dower; this is also a deforcement to the widow, by withholding lands to which she hath a right.

In like manner, if a man lease lands to another for a term of years, or for the life of a third person, and the term expire by surrender, efflux of time, or death of the *cestui qui vie;* and the lessee, or any stranger, who was at the expiration of the term in possession, hold over, and refuse to deliver the possession to him in remainder or reversion; this is also a deforcement.

Deforcements may also arise upon a breach of a condition in law; as, if a woman give lands to a man by deed, to the intent that he marry her, and he will not when thereunto required, but continues to hold the lands; this is such a fraud on the man's part that the law will not allow it to divest the woman's right of possession, though, his entry being lawful, it does divest the actual possession, and thereby becomes a deforcement.

Deforcements may also be grounded on the disability of the party deforced: as, if an infant make an alienation of his lands, and the alienee enter and keep possession; now, as the alienation is voidable, this possession as against the infant (or in case of his decease, as against his heir) is after avoidance wrongful, and therefore a deforcement. The same happens when one of non-sane memory alienes his lands or tenements, and the alienee enters and holds possession; this also may be a deforcement.

Another species of deforcement is, where two persons have the same title to land, and one of them enters and keeps possession against the other; as where the ancestor dies seised of an estate in fee-simple, which descends to two sisters as coparceners, and one of them enters before the other, and will not suffer her sister to enter and enjoy her moiety; this is also a deforcement.

Deforcement may also be grounded on the non-performance of a covenant real: as, if a man seised of lands covenant to convey them to another, and neglect or refuse so to do, but continues possession against him; this possession, being wrongful, is a deforcement: whence, in levying a fine of lands, the person against whom the fictitious action is brought, upon a supposed breach of covenant, is called the *deforciant*. And, lastly, by way of analogy, keeping a man by any means out of a freehold office is construed to be a deforcement; though, being an incorporeal hereditament, the deforciant has no corporeal possession. So that whatever injury, in withholding the possession of a freehold, is not included under one of the four former heads, is comprised under this of deforcement.

The several species and degrees of injury by ouster being thus defined, the next consideration is the remedy; which is, universally, the *restitution* or *delivery of possession* to the right owner, and, in some cases, *damages* also for the unjust amotion. The methods whereby these remedies, or either of them, may be obtained, are various:

1. The first is the extra-judicial and summary one of *entry* by the legal owner, when another person, who hath no right, hath previously taken possession of lands and tenements. In this case the party entitled may make a formal, but peaceable entry thereon, declaring that thereby he takes possession; or he may enter on any part of it in the same county, declaring it to be in the name of the whole; but if it lie in different counties, he must make different entries. Also, if there be *two* disseisors, the party disseised must make his entry on *both;* or if *one* disseisor have conveyed the lands with livery to *two* distinct feoffees, entry must be made on *both:* for as their seisin is distinct, so also must be the act which divests that seisin.

If the claimant be deterred from entering by menaces or bodily fear, he may make *claim*, as near to the estate as he can, with the like forms and solemnities: which claim is in force for only a year and a day. And this claim, if it be repeated once in the space of every year and day (which is called *continual claim)*, has the same effect with, and in all respects amounts to, a legal entry.

This remedy by entry takes place in three only of the five species of ouster, *viz.* abatement, intrusion, and disseisin; for, as in these the original entry of the wrong-doer was lawful, they may therefore be remedied by the mere entry of him who hath right. But upon a discontinuance or deforcement, the owner of the estate cannot

enter, but is driven to his action: for herein the original entry being lawful, and thereby an apparent right of possession being gained, the law will not suffer that right to be overthrown by the mere act or entry of the claimant. Yet a man may enter on his tenant by sufferance; for such tenant hath no freehold, but only a bare possession, which may be defeated, like a tenancy at will, by the mere entry of the owner. But if the owner think it more expedient to suppose or admit such tenant to have gained a tortuous freehold, he is then remediable by writ of entry.

On the other hand, in case of abatement, intrusion, or disseisin, where entries are generally lawful, this right of entry may be *tolled*, that is, taken away by descent. Descents, which take away entries, are, when any one seised by any means whatsoever of the inheritance of a corporeal hereditament, dies, whereby the same descends to his heir: in this case, however feeble the right of the ancestor might be, the entry of any other person who claims title to the freehold is taken away; and he cannot recover possession against the heir by this summary method, but is driven to his action to gain a legal seisin of the estate.

So that in general it appears, that no man can recover possession by mere entry on lands which another hath by descent. Yet this rule hath some exceptions, wherein those reasons cease upon which the general doctrine is grounded, especially if the claimant were under any legal disabilities during the life of the ancestor, either of infancy, coverture, imprisonment, insanity, or being out of the realm; in all which cases there is no neglect or *laches* in the claimant, and therefore no descent will bar or take away his entry. And this title of taking away entries by descent is still farther narrowed by the 32 Hen. VIII. c. 22, which enacts, that if any person disseise or turn another out of possession, no descent to the heir of the disseisor shall take away the entry of him that hath a right to the land, unless the disseisor had peaceable possession five years next after the disseisin. But the statute extends not to any feoffee or donee of the disseisor, mediate or immediate. On the other hand, it is enacted by the Statute of Limitations (21 Jac. I. c. 16), that no entry shall be made by any man upon lands, unless within twenty years after his right shall accrue. And by the 4 & 5 Anne, c. 16, no entry shall be of force to satisfy the said Statute of Limitations, or to avoid a fine levied of lands, unless an action be thereupon commenced within one year after, and prosecuted with effect.

2. Thus far of remedies, where the tenant or occupier of the land hath gained only a *mere possession*, and no apparent shadow of right. Next follow another class, which are in use where the title of the tenant or occupier is advanced one step nearer to perfection, so that he hath in him not only a bare possession, which may be destroyed by a bare entry, but also an *apparent right* of possession, which cannot be removed but by orderly course of law; in the process of which it must be shewn, that although he hath at present possession, and therefore hath the presumptive right, yet there is a right of possession superior to his, residing in him who brings the action.

These remedies are either by a *writ of entry* or an *assize*, which are actions merely *possessory;* serving only to regain that possession, whereof the demandant (that is, he who sues for the land) or his ancestors have been unjustly deprived by the tenant or possessor of the freehold, or those under whom he claims. They decide nothing with respect to the *right of property;* only restoring the demandant to that state or situation in which he was (or by law ought to have been) before the dispossession committed. But this without any prejudice to the right of ownership; for if the dispossessor have any legal claim, he may afterwards exert it, notwithstanding a recovery against him in these possessory actions. Only the law will not suffer him to be his own judge, and either take or maintain possession of the lands, until he hath recovered them by legal means; rather presuming the right to have accompanied the ancient seisin, than to reside in one who has no such evidence in his favour.

TAXES AND POOR RATES.

ALL taxes, except the land tax, sewer-rate, and one or two others of lesser importance, must be paid by the tenant.

With respect to the land tax, the landlord, by act of parliament, is bound to pay it, although in the first instance it is levied upon the tenant; but if a lessee covenant to pay a rent without deducting taxes, an act authorising tenants to deduct will not repeal the covenant: and a covenant that the tenant is to pay the land tax will hold, notwithstanding the acts impose it upon the landlord; but then it must be expressly named: and a lease in which

the rent reserved was to be paid "without any deduction or abatement whatever," will not preclude the tenant from deducting the land tax; but it has been decided that if the tenant do not deduct the land tax from the rent of the current year, he will be precluded from deducting it from the rent of any following year.

In a covenant in a building lease on the part of the tenant to pay all taxes except the land tax, it was held that the lessor was only bound to pay the old land tax, and not the additional tax imposed in consequence of the improvement of the estate: and if a lessee covenant to pay "all taxes," this binds him to pay such taxes only as were in existence at the time of making the lease.

The poor's rates, as well as other parochial taxes, are to be borne by the *tenant*.

By 43 Eliz. c. 2, which is the foundation of the poor laws, the churchwardens and overseers of every parish, or the greater part of them, shall, with the consent of two justices (one of whom shall be of the quorum) dwelling in or near the parish or division, raise, weekly or otherwise, by taxing, in such sums of money as they shall think fit, every inhabitant, parson, vicar, and other and every occupier of lands, houses, tithes impropriate, propriations of tithes, coal-mines, or saleable underwoods in the parish, a sufficient stock of flax, hemp, wool, yarn, and other necessary ware and stuff, to set the poor to work, and also money for the relief of the lame, impotent, old, blind, and others being poor and not able to work, and also for putting out poor children apprentice, and generally to do all other things as to them shall seem meet.

By the 17 Geo. II. c. 30, the rate must be made on all the rateable inhabitants in equal proportions, according to their respective properties and possessions. And the rate is to be made according to the improved value of the estate, and not according to the rent which the occupier may pay for it.

And where any person shall come into or occupy any house, land, &c. out of which any person assessed shall have removed, or which at the time of making a rate was empty, every person so removing from, and every person so coming into, or occupying the same, shall be liable to pay such rate only in proportion to the time they occupied the same, in like manner as if the person so removing had not removed, or the person coming in had been originally rated; which proportion is to be ascertained, in case of

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dispute, by any two justices of the peace; and if they make it unequal, it must be corrected by appeal to the sessions.

Further, if it appear to any two justices of the peace that any parish is unable to levy within itself sufficient money for the purposes of that Act, they are empowered to rate such sum as may be necessary upon any other parish or place (whether parochial or not) within the hundred, as the justices at their quarter-sessions may upon any parish, &c. within the county; and, in making this rate, they may tax particular persons only, or assess one gross sum upon the whole parish at their discretion, and leave it to the churchwardens and overseers to levy the same.

By 59 Geo. III. c. 12, from and after the 1st of January, 1820, the inhabitants of any parish in vestry assembled are empowered to resolve and direct, that the owner or owners of all houses, apartments, or dwellings in such parishes, being the immediate lessor or lessors of the actual occupier or occupiers, which shall respectively be let to the occupiers thereof at any rent or rate not exceeding twenty nor less than six pounds by the year, for any less term than one year, or on any agreement by which the rent shall be reserved or made payable at any shorter period than three months, shall be assessed to the rates for the relief of the poor, for or in respect of such houses, apartments, or dwellings, and the out-houses and curtilages thereof, instead of the actual occupiers; and the inhabitants so assembled in vestry may from time to time rescind, renew, vary, and amend every such resolution and direction, as they shall see occasion, so as no such resolution or direction shall extend to assess or charge the owner of any house, apartment, or dwelling, which shall, with the out-houses and curtilages thereof, be let at a greater rent than twenty pounds, or less than six pounds.

The goods of occupiers of such houses, as aforesaid may be distrained for rates to the amount of the rent actually due; and every occupier who shall pay any such rate or rates, or upon whose goods or chattels the same shall be levied, may deduct the amount of the sum which shall be so paid or levied out of the rent by him or them payable: and such payment shall be a sufficient discharge to every such occupier for so much of the rent payable by him as he shall have paid, or as shall have been levied on his goods and chattels, of such rate, and for the costs of levying the same

Every person receiving or claiming the rent of any such house, apartment, or dwelling, for his or her own use, or receiving it for the use of any corporation aggregate, or of any landlord or lessor who shall be a minor, under coverture, or insane, or for the use of any person who shall not be usually resident within twenty miles from the parish in which any such house, apartment, or dwelling, shall be situated, shall be deemed and taken to be, and shall be rateable as the owner thereof.

Persons rated as owners may appeal; and may vote in vestries; but no owner, not being an occupier, can be rated in places where the right of voting for members to serve in parliament depends on the rating.

A person is rateable for the whole of the house in which he dwells, though he use or inhabit but a part of it. But where a house is divided into several distinct tenements, and inhabited by different families, or where two several houses have but one entrance, they may be rated separately.

The Species of Property liable to be Rated

A farmer is not taxable to the poor for his stock; though a tradesman is taxable for his stock in trade.

A private building, always used as a chapel, and by contract never to be used for any other purpose, is, if a profit be made of it, rateable to the poor.

A Quaker meeting-house, of which no profit is made, is not rateable.

Fish are tithable by custom; and the proprietors of such tithes are liable to be rated to the relief of the poor.

Tolls taken on a river and in corporations are rateable.

Ships are rateable to the poor in the parish to which they belong; and a machine-house for weighing waggons, &c. has been held rateable.

Hospital lands are chargeable to the poor, as well as others; for no man, by appropriating his lands to an hospital, can discharge or exempt them from taxes to which they were subject before, and throw a greater burthen upon his neighbours. But hospitals are exempted, excepting those parts of them which are inhabited by the officers belonging to the hospital; as the chaplain, physician, and the like.

An alms-house, wholly occupied by objects of charity or their attendants, and of which no profit is made, has no legal occupiers, and is not an object of taxation under the poor laws.

The profits arising from a mineral spring, with land at a gross rent, are considered as part of the produce, and are therefore rateable.

Where the commanding officer in barracks had distinct apartments allotted to him, one in particular for transacting the business of the regiment, and the others fitted up for the accommodation of himself and his family, who resided there with him, containing, among others, a kitchen, wash-house, and coach-house, together with a stable, yard, and garden; it was held that he was rateable to the relief of the poor for the same, having a beneficial enjoyment of them, beyond his necessary accommodation as an officer for the purpose of the public service.

Money is not rateable; and the stock of a common brewer cannot be sufficiently ascertained to be rated to the relief of the poor.

A parson who lets to each parishioner his own tithes, is properly the occupier, and ought to be rated.

Coal mines are expressly mentioned in the statute, as rateable; but lead mines and iron mines are not rateable to the relief of the poor.

By 17 Geo. II. c. 37, where there shall be any dispute in what parish or place improved wastes, and drained and improved marsh lands lie, and ought to be rated; the occupiers of such lands, or houses built thereon, tithes arising therefrom, mines therein, and saleable underwoods, shall be rated to the relief of the poor, and to all other parish rates within such parish or place which lies nearest to such lands; and if, on application to the officers of such parish or place to have the same assessed, any dispute shall arise, the justices at the next sessions after such application made, and after giving notice to the officers of the several parishes and places adjoining to such lands, and to all others interested therein, may hear and determine the same on the appeal of any person interested, and may cause the same to be equally assessed, whose determination therein shall be final.

INSURANCE.

WHERE a lessee covenants to repair generally, he will be liable to rebuild, although the premises should be destroyed either by fire or tempest; and be liable to pay

the rent to the landlord, although the premises may be consumed by fire; so that prudence dictates an insurance.

By the common law, a tenant would have been guilty of waste in neglecting to rebuild, in case the premises were destroyed by fire: but by the 6 Anne, c. 31, sec. 6, 7, it is enacted, that no process shall be maintained against any person in whose house or chambers any fire shall *accidentally* begin, or any recompence be made by such person for any damage suffered thereby; provided that this shall not extend to defeat or make void any contract or agreement made between landlord and tenant.

In the proposals of the London Assurance, and some other offices, there is a clause by which it is provided, that they do not hold themselves liable for any loss or damage by fire happening by any invasion, foreign enemy, *or any military or usurped power* whatsoever; and it formerly became a question, what species of insurrection should be deemed *a military or usurped power*, when it was held, that it could only mean houses set on fire by means of an invasion from abroad, or of an internal rebellion, when armies are employed to suppress it.

An action was brought on a policy of insurance, to recover from the Sun Fire-Office a compensation for damage done to the plaintiff's house and goods by the rioters in June, 1780. As the circumstances of these riots were then recent, they were not very minutely gone into at the trial. It was, however, sufficiently proved, that the plaintiff, on account of his religion (being a Roman Catholic), had been, amongst others, selected as an object of the rage of the times, and that his houses and effects were set on fire. The office defended this action, considering that they were protected by this article, namely—"That they would not answer for any loss occasioned by any invasion, foreign enemy, *civil commotion*, or any military or usurped power whatever." This point was argued at much length by the counsel on both sides. It was held, however, that this was a case coming under the description of a *civil commotion*, and a verdict was accordingly found for the defendants.

In a policy of insurance against loss by fire, the insured agreed to pay the premium half-yearly, "as long as the insurers should agree to accept the same, *within fifteen days after the expiration of the former* half year;" and it was also stipulated that no insurance should take place till the insurance was actually paid; a loss happened within fifteen days after the end of one half year, but before the

premium for the next was paid; and it was held that the assurers were not liable, though the assured tendered the premium before the end of fifteen days, but after the loss. The defendants in the above cause were members of a society at Liverpool for the insurance of property from fire.

But, soon after the decision, the Royal Exchange Assurance Company, the Phœnix, and some other Insurance Companies, gave notice, that they did not mean to take advantage of the judgment so pronounced, but would hold themselves liable for any loss during the fifteen days that were allowed for the payment of the insurance upon annual policies, and all other policies of a longer period. But that policies for a shorter period than a year would shut at six o'clock in the evening of the day mentioned in the policy.

When a fire happens, and the party sustains a loss, he must give immediate notice to the office in which he is insured; and, as soon as possible, deliver in a particular account of his loss; and make proof of the same by his oath, or affirmation, by books of account, or such other vouchers as shall be required, or as shall be in existence; with a certificate under the hands of the minister and churchwardens, with other reputable inhabitants of the parish, importing, that they are well acquainted with the character of the sufferer, and verily believe that he or she have really, and by misfortune, sustained by such fire the loss and damage therein mentioned.

An insurance against fire being a contract of indemnity, the end of the contract is answered by putting the party in the same situation, in case of fire, in which he was before the accident happened. The offices consider themselves liable for partial losses only; and some expressly undertake to allow all reasonable charges attending the removal of goods in case of fire, and to pay the sufferer's loss, where the goods are destroyed, lost, or damaged by such removal.

Policies of insurance against fire are not assignable, for they are only contracts to make good the loss which the contracting party himself shall sustain; nor can the interest in them be transferred from one person to another, without the consent of the office; but there is a case in which policies are allowed to be transferred, and that is, when any person dies, the policy and interest therein shall continue to the heir, executor, or administrator respectively, or to whom the property insured shall belong; provided before any new payment be made, such heir,

executor, or administrator, do procure his or her right to be indorsed on the policy at the office, or the premium be paid in the name of the heir, executor, or administrator.

In the body of the policy, the offices acknowledge the receipt of the premium at the time of making the insurance; and by the printed proposals it is expressly stipulated, that no insurance shall take place till the premium be actually paid by the insured, his, her, or their agent or agents.

By the Building Act, 14 Geo. III. the respective governors or directors of the several insurance offices, for insuring houses or other buildings against loss by *fire*, are empowered to lay out such insurance money for the reinstating such buildings so burnt down, unless the party so claiming such insurance money shall, within sixty days next after his, her, or their claim is adjusted, give a sufficient security, that the same insurance money shall be expended in re-instating their property so burnt down or damaged, or unless such insurance money is disposed of within that time to the other contending parties; *and this is done with a view to prevent persons claiming their insurance money under false pretences.*

MORTGAGES.

MORTGAGES, though not strictly within the considera tion of the Law of Landlord and Tenant, have so much relation to it, as to require notice in a treatise of this kind; and the more so, because great frauds and loss of property arise out of mortgages, made by persons in necessity, to powerful and unprincipled mortgagees, who are always on the alert, to take every advantage of the poor and unwary.

We need hardly say, that mortgages ought always to be avoided; and money, where required, raised, if possible, upon other terms, for nothing is so dangerous as this mode of disposing of lands or houses. When they are sold properly at once, the seller has the satisfaction of receiving their value, and knowing that he has had it; but property is generally mortgaged for infinitely less than it is worth; and, when so mortgaged, it has at least a chance of being in the hands of those who will take care to turn the wants of the mortgagor to their own advantage, so as ultimately to obtain the entire possession.

As mortgages will, however, frequently occur, we proceed, with this caution, to describe their legal nature and effect.

Estates are sometimes held *in vadio*, which means, in gage, or pledge; and this pledge is of two kinds, that is, in *vivum vadium*, or *living* pledge; and in *mortuum vadium*, the *dead* pledge, or *mortgage*.

The *vivum vadium*, or *living* pledge, is when one man borrows a sum of another, say £200, and grants him an estate, say of £20 a-year, to hold till the *rents* and *profits* shall repay the sum so borrowed. This is an estate conditioned to be void as soon as such sum is raised; and, in this case, the land or pledge is said to be living, as it subsists and survives the debt, and reverts back to the borrower, *as soon as the debt is discharged.*

This mode, however, not being so advantageous to the *money-lender*, who can say on what terms he will lend, and more in favour of the land-owner, the money-lender has always, in preference, recourse to *mortuum vadium*.

the *dead* pledge, or mortgage; which is, where one person borrows of another a sum, say £200, and grants him an estate in fee, on condition that if the mortgagor shall repay the mortgagee the said sum of £200, on a certain day mentioned in the deed, then the said mortgagor may re-enter on the estate so granted in pledge; or, as is now the more usual way, that then the mortgagee shall re-convey the estate to the mortgagor. And in this case, if the money is not paid at the time limited, the land is for ever dead and gone from the mortgagor, and the *mortgagee*, or *money-lender*, becomes the absolute proprietor of the estate, and the borrower has no longer any claim upon it.

As soon as the estate is created, the mortgagee may immediately enter on the lands; but is liable to be dispossessed upon performance of the condition, by payment of the mortgage-money at the day limited. And therefore the usual way is to agree that the mortgagor shall hold the land till the day assigned for payment; when, in case of failure, whereby the estate becomes absolute, the mortgagee may enter upon it, and take possession, without any possibility at law of being afterwards evicted by the mortgagor, to whom the land is now for ever dead.

But here indeed the Courts of Equity sometimes interpose; and though a mortgage be thus forfeited, and the estate absolutely vested in the mortgagee at the common law, yet they will consider the real value of the tenements compared with the sum borrowed; and, if the estate be of greater value than the sum lent thereon, they will allow the mortgagor at any reasonable time to recal or redeem his estate, paying to the mortgagee his principal, interest, and expences; for otherwise, in strictness of law, an estate worth £1000, might be forfeited for nonpayment of £100, or a less sum.

This reasonable advantage, allowed to mortgagors, is called the *equity of redemption;* and this enables a mortgagor to call on the mortgagee, who has possession of his estate, to deliver it back, and account for the rents and profits received, on payment of his whole debt and interest; thereby turning the dead into a kind of living pledge. But, on the other hand, the mortgagee may either compel the sale of the estate, in order to get the whole of his money immediately, or else call upon the mortgagor to redeem his estate presently, or in default thereof to be for ever *foreclosed* from redeeming the same; that is, to lose his equity of redemption, without possibility of recal.

In some cases of fraudulent mortgages, the fraudulent mortgagor forfeits all equity of redemption whatsoever. This equity of redemption is also dependent upon the power of the mortgagor to defray the expences of a Chancery suit, which rarely happens to be the case, while the mortgagee is in possession of the means of defence, often at the cost of the mortgagor. Indeed, it was once said by an impudent knave, against whom a suit in Chancery was brought to recover an estate, that the estate was worth £5000 a-year, and he could be sure of keeping it, as long as he spent *half the sum* in law, and then he had £2500 a-year to live upon.

By the 4 & 5 W. & M. if any person mortgage his estate, and do not previously inform the mortgagee in writing of a prior mortgage, or of any judgment or incumbrance which he has voluntarily brought upon the estate, the mortgagee shall hold the estate as an absolute purchaser, free from the equity of redemption of the mortgagor.

APPORTIONMENT OF RENT BY THE ACT OF GOD, OR THE LAW, IN PARTICULAR CASES.

This is a consideration which arises, whether a tenant shall pay the whole rent, though a part of the thing demised to him be lost, and of no profit to him; or where the use of the whole is for some time intercepted, or taken away, without his default; in which cases, it is extremely reasonable, if the use of a thing be entirely lost, or taken away from the tenant, that the rent ought to be abated, or apportioned, because the title of the rent is founded on the presumption that the tenant enjoys the thing during the contract. Therefore, if part of the land be surrounded or covered by the sea, this being the act of God, the tenant shall not suffer by it; because the tenant, without his default, wants the enjoyment of part of the thing which was the consideration of his paying the rent: nor has the lessor reason to complain, because, if the land had been in his own hand, he must have lost the profit of so much as the sea had covered.

But if part of the land be burned with wildfire, that shall make no abatement or apportionment of the rent: because the use of the land is not thereby taken away or interrupted; it may, indeed, be thereby rendered less pro-

fitable, but that seems to be a common accident, that land shall yield more one year than another; and it seems that the land in this case may be restored in a great measure to its fertility, by the care and industry of the tenant.

If A., seised of one acre in fee, and possessed of another acre for years, make a lease of both, reserving rent, and dies; the rent shall be apportioned with the reversion, and the *heir* and *executor* shall have each his proportion.

If a moiety of a reversion be extended by *elegit*, the rent shall be apportioned; and the lessor shall still enjoy half the rent, as incident to the reversion that remains in him.

So if a husband lease for years, reserving rent, and die; the wife having a third part of the reversion for her dower, she shall have the same proportion of the rent. For in all these cases the law distributes the rent as it disposes of the reversion; since the rent is the retribution the tenant makes to those who are entitled to the reception of the profits of the land itself, if the lease were expired.

We have now brought this part of our Work to a conclusion, and have embodied, in a clear and conspicuous manner, the whole LAW OF LANDLORD AND TENANT, in the various relations of the respective parties, with the legal proceedings that can be taken, in case of the breach of the laws that affect either. In doing this, the great object has been to convey information in the most intelligible mode, on a subject which has many difficulties arising out of the great number of Acts of Parliament to regulate landed property in this country; and two advantages, we have reason to believe, will result from our labours. First, when a harsh landlord knows that his tenant understands something of the principles of the law, he will hesitate before he proceeds to measures in which he may be defeated, and perhaps punished; and, secondly, the tenant will learn that his landlord has the means of obtaining what is due, in so summary a manner, that any foolish opposition can only be attended with loss and trouble to himself. The greatest value of a knowledge of the law is, to enable a man *to keep out of it;* the winners, as they are called, being generally losers; while the losers, in many cases, are absolutely ruined. To have nothing to do with it, is, there-

fore, the wisest policy; and it would be often better to put up with a trifling imposition, rather than go to law for redress; but the mischief is, that to put up with one imposition from some persons, is to invite others, so that a determined resistance may become necessary, and, when founded upon sound information, it will generally prevail.

It is a matter of prudence, however, in any *difficult* or *extraordinary* cases, to procure professional assistance; and, whenever this is applied for, go at once to some respectable person, and *be sure to state all the facts of the case*, whether they make for one side or the other; conceal nothing, and misrepresent nothing, but tell all, whether for or against: he will then be able to advise properly; and if the reader has studied our pages carefully, he will easily be able to judge of the value of the advice that is offered, and use it accordingly.

THE LAW

OF

DEBTOR AND CREDITOR.

THE next subject to which we shall call the attention of our readers, is the law as it respects the relations of Debtor and Creditor, which are so very important in a country like Great Britain, where the extent of commercial and other intercourse respecting property is so great, as to render credit absolutely necessary; and upon the good faith with which that credit is upheld, the commerce may be said to depend.

The subject divides itself into two parts:—the one, the means which the law gives to unfortunate debtors to relieve themselves from their embarrassments; and the other, the means by which creditors can enforce their demands against debtors who have the means of paying their debts, but either want the inclination to do so, or who dispute the claims that are preferred against them.

We shall consider, in the first place, the three means which are provided to enable the debtor to relieve himself from obligations that he cannot discharge, which are

1. Bankruptcy.
2. Taking the benefit of the Insolvent Act.
3. Composition with creditors.

ADVANTAGES AND DISADVANTAGES OF BANKRUPTCY, INSOLVENCY, AND COMPOSITION WITH CREDITORS.

There is some difference between *bankruptcy* and *insolvency*, in the consequences that result to the parties, which makes it often a matter of very serious consideration

with those who are involved in pecuniary difficulties, what course should be taken to be extricated from their embarrassments in the safest manner, in the shortest manner, and in a manner that may leave the least possible incumbrance upon the future pursuits of life. In the first place, the honest debtor, who has been involved by misfortune, should consider how he may best regain his station in society, after the business is over. The law requires that the debtor should surrender all that he has to his creditors, when he is not able to pay them the whole of their demands; and, in consequence of this surrender of all that he has, the law says the creditor shall be satisfied; that the debtor shall be restored to his liberty, and left to do what he can for his own support, unfettered by any previous debt; but this release from former obligations is not without conditions, in cases where the debtor takes the benefit of the Insolvent Act. In such cases the debtor is released from custody, on complying with the provisions of the law; and whatever he acquires afterwards, is not liable to be taken for any portion of his old debts, until all those which he afterwards contracts are paid off. But where it can be proved that a person, who has taken the benefit of the Insolvent Act, has really obtained or succeeded to property, of which he obtains possession, and that it is more than sufficient to discharge all his *new* debts; in such cases, the property becomes liable to his former debts, in the proportion that remains unpaid, and his former creditors may proceed against him as for a newly-contracted debt. It is true this is done, in fact, but seldom; because, what a man afterwards acquires, is not generally known, either as to the time of acquirement, or the extent of the property acquired; and it is very easy to bring forward new debts and new claimants to any amount, where persons are not disposed to do justice:—but, because it is very seldom that persons who take the benefit of the Insolvent Act are troubled afterwards by their old creditors, it is mistakenly considered by some that, in reality, it is as good a discharge from debt as a regular act of bankruptcy, followed by the granting of a certificate. But this is a great mistake; and may sometimes be a very serious one into the bargain; for every description of property is liable to the old debts of persons who have taken the benefit of Acts to relieve insolvents; and it might so happen, that a family would unexpectedly come into the possession of property to a large amount, and be deprived of it as unexpectedly, by the revival of

old claims of many years standing, and which were supposed to have been entirely abolished.

It is, therefore, the *safest* method to take advantage ot the bankrupt laws; and, in *all* cases where the sum at issue is large, and the estate is capable of defraying the expenses of the commission, it is to the advantage of the debtor to endeavour to be made a bankrupt, for several reasons.

In the first instance, *it costs him nothing*, as the expenses are paid by the creditors themselves, out of what they would otherwise have to receive.

In the second, the bankrupt generally receives some allowance out of the estate, while the business is proceeding.

In the third, it is also usual to leave the bankrupt some portion of his furniture, his clothes, his watch, the money in his pocket; and he is also entitled to receive a per centage on the amount of his debts, if the estate should pay a certain dividend.

Fourthly, it is considered a more honourable method of meeting creditors, when there is really a tolerable sum to divide amongst them.

And, fifthly, it completely relieves the bankrupt from all further responsibility, and leaves his future exertions entirely unshackled.

While, on the other hand, a person taking the benefit of the Insolvent Act must pay all the expenses himself; he is allowed to retain only a small portion of property in his possession; his creditors are never disposed to assist him, because they commonly believe him to be a dishonourable man, who obtains his discharge from a tribunal which decides, for the most part, on the statement of the insolvent himself, and which has rarely any means of getting at the truth; and, after all this, the insolvent is *liable* afterwards for the remainder of his old debts, if it is ever known that he has acquired the means of paying them.

These considerations seem to decide the question in favour of *bankruptcy*, and against taking the benefit of the Insolvent Act: and so they really do, with those who have a prospect of having any property afterwards. And yet the great majority of insolvent debtors prefer taking the benefit of the Act. The reasons which induce them to do so, are—

1st, That it costs but a few pounds to take the benefit of the Insolvent Act.

2d, That the business is over in a few weeks.

3d, That there is not the difficulties arising out of a personal meeting with the creditors.

4th, That it is more easy to pass the examination of the Commissioners of the Insolvent Court, than the examination of the Commissioners of the Bankruptcy Laws.

And, 5th, The consequences of a failure are not so serious; and the punishment for fraud is of a much lighter description.

These reasons result from the necessity of such laws as the Acts of Insolvency. Without them, the prisons would be filled with unfortunate debtors among the lower rank of tradesmen, who do not owe enough to make it worth the while of the creditors to sue out a Commission of Bankruptcy; who, perhaps, possess nothing; and yet, if the law did not give them some protection, might pass years of their lives in prison, to the destruction of their own energies, and the entire ruin of their families, without the least benefit to their creditors. The law, therefore, both wisely, and of necessity, steps in, to release the debtor, upon condition of his surrendering *all* he has to his creditors, however *little* that all may be, and whatever disproportion it may bear to the debts he owes.

Composition with Creditors.

This is another mode by which the debtor, who cannot satisfy the demands upon him in full, often settles his affairs with his creditors, without the interference of the law; and it is by far the best method of settlement, in every point of view, when it can be effected; but as it requires the consent of all the parties, and a general concurrence, to carry it into effect, it is not so common as it ought to be, from the advantages which both debtors and creditors would reap from it, where every thing is effected in an honest manner. These advantages are, that it is the *least expensive* means of arrangement, costing less than the proceedings in the Insolvent Debtors' Court, and being as *safe* for the debtor as a certificate under a Commission of Bankruptcy; while the creditor saves all that would otherwise be expended in legal proceedings, and of course secures a larger proportion of his debt. The principle upon which these compromises, or compounding with creditors, proceeds, is, that the creditors, after satisfying themselves, by an examination of his accounts, or otherwise, that the debtor is really in a state of insolvency, and cannot pay them their demands in full, consent to

take so much in the pound, in discharge of the debt, as the debtor's property will afford to each of them. The amount, of course, would vary with the circumstances of the case; but where the debtor acts fairly, and is met fairly by his creditors, it will rarely happen that the sum which one can pay will be refused by the other; and as this is, in some sort, a *friendly* arrangement, the debtor is seldom stripped entirely of his property; something is left him to begin with again, and, what is still better, the good will of his creditors, which is the basis of the arrangement, leaves the debtor in possession of a degree of credit with them, that, if used discreetly, may restore the fortunes of the one, and further lessen the loss of the creditor by the profit of future dealings. In every respect this principle ought to be adopted, wherever it is practicable; and debtors ought always to remember, that it is their business, their interest, and their duty, to give as early a notice of their insolvency as they possibly can. Whenever the affairs of a man become embarrassed, by accident or misfortune, and the property of other persons is placed in danger, it is a species of dishonesty to proceed from bad to worse. The common plea is, that people so situated expect to be able to retrieve themselves, and go on, expecting to meet with better success than they had before; and, in some cases, this expectation may be answered: but, in far the greater number, the matter becomes worse and worse by delay: and a man, who, by paying 10*s*. or 15*s*. in the pound, might have saved his character, kept his connexion, and freed himself from all embarrassment, will struggle on against a current that he cannot overcome, until he has exhausted all his means, and involved all who would trust him, and then becomes an outcast from society, with his prospects ruined by his own imprudence, and his family beggared by conduct which is little short of actual crime.

Creditors are often reproached, and sometimes deservedly, with cruelty and hard-heartedness; but the blame lies as often at the door of the improvident debtor. The unfortunate creditor may be as poor as the debtor; nay, he may be a debtor to another person, and while he is blamed for hurrying his debtor to prison, he may be induced to do so, to avoid being sent to prison himself, for money which he owes, and which is owing to him, but which he cannot get. These remarks are a little beyond the scope of our duty, which is not to read moral lectures either to debtors or creditors; but we have been led into

them, from a consideration of the great advantages which *compounding with creditors* has over either acts of insolvency, or commissions of bankruptcy; and from the knowledge of the fact, that creditors will never listen to proposals of compromise, unless they are pretty well convinced that the debtor has acted with tolerable honesty and candour in his appeal to their favourable consideration.

The law has recently, in certain cases, adopted the principle of compounding for debts, by enabling a certain proportion of the creditors to agree to a composition of so much in the pound, and restricting a small minority, who might object to it, from any other proceedings, as will be seen in our future pages. At present, the reader will be content with the contrast of the advantages and disadvantages of the three methods which are open to debtors to release themselves from their difficulties; from which they will be enabled to select the one that is the best adapted to their means, and the circumstances in which they are placed.

We shall now proceed to the practical detail of the measures to be pursued, to put the law in operation; and, first, of

BANKRUPTCY.

A bankrupt is "a trader who secretes himself, or does certain other acts, tending to defraud his creditors." The law of bankruptcy compels the bankrupt to give up all his effects to the use of his creditors, without any fraudulent concealment; for which his person is left at liberty.

The law of the 6 Geo. IV. c. 16, commencing from the 1st of September, 1825, repeals all former enactments respecting bankrupts.

What Persons are liable to be made Bankrupts.

By this law it is enacted, That all bankers, brokers, and persons using the trade or profession of a scrivener, receiving other men's moneys or estates into their trust or custody, and persons insuring ships or their freight, or other matters, against the perils of the sea, warehousemen, wharfingers, packers, builders, carpenters, shipwrights, victuallers, keepers of inns, taverns, hotels, or coffee-houses, dyers, printers, bleachers, fullers, calenderers, cattle or sheep salesmen; and all persons using the trade of merchandise by way of barguining, exchange, bartering, commission, consignment, or otherwise, in gross or by retail; and all persons who, either for themselves, or as

agents or factors for others, seek their living by buying and selling, or by buying and letting for hire, or by the workmanship of goods or commodities, shall be deemed traders liable to become bankrupt: provided, that no farmer, grazier, common labourer, or workman for hire, receiver-general of the taxes, or member of or subscriber to any incorporated, commercial, or trading companies established by charter, or by or under the authority of any Act of Parliament, shall be deemed, as such, a trader liable by virtue of this Act to become bankrupt.

What constitutes an Act of Bankruptcy.

If any such trader depart this realm, or being out of the realm shall remain abroad, or depart from his dwelling house, or otherwise absent himself, or begin to keep within his house, or suffer himself to be arrested for any debt not due, or yield himself to prison, or suffer himself to be outlawed, or procure himself to be arrested, or his goods, money, or chattels to be attached, sequestered, or taken in execution, or make, either within the United Realm or elsewhere, any fraudulent grant or conveyance of any of his lands, tenements, goods, or chattels, or make any fraudulent surrender of any of his copyhold lands or tenements, or make any fraudulent gift, delivery, or transfer, of any of his goods or chattels, every such trader doing any of the acts, deeds, or matters aforesaid, with intent to defeat or delay his creditors, shall be deemed to have thereby committed an act of bankruptcy

And where any such trader shall execute any conveyance or assignment by deed to a trustee or trustees of all his estate and effects for the benefit of all his creditors, the execution of such deed shall not be deemed an act of bankruptcy, unless a commission issue against such trader within six calendar months from the execution thereof; provided that such deed shall be executed by every such trustee within fifteen days after the execution thereof by the said trader, and that the execution by such trader and by every such trustee be attested by an attorney or solicitor; and that notice be given within two months after the execution thereof by such trader, in case such trader reside in London, or within forty miles thereof, in the London Gazette, and also in two London daily newspapers; and in case such trader does not reside within forty miles of London, then in the London Gazette, and also in one London daily newspaper, and one provincial newspaper published near to such trader's residence; and

such notice shall contain the date and execution of such deed, and the name and place of abode respectively of every such trustee, and of such attorney or solicitor.

And if any such trader, having been arrested, or committed to prison for debt, or on any attachment for nonpayment of money, shall, upon such or any other arrest or commitment for debt or nonpayment of money, or upon any detention for debt, lie in prison for twenty-one days, or having been arrested or committed to prison for any other cause, shall lie in prison for twenty-one days after any detainer for debt lodged against him, and not discharged, every such trader shall be thereby deemed to have committed an act of bankruptcy; or if any such trader, having been arrested, committed, or detained for debt, shall escape out of prison or custody, every such trader shall be deemed to have thereby committed an act of bankruptcy from the time of such arrest, commitment, or detention: provided, that if any such trader shall be in prison at the time of the commencement of this Act, such trader shall not be deemed to have committed an act of bankruptcy by lying in prison, until he shall have lain in prison for the period of two months.

And if any such trader shall file, in the office of the Lord Chancellor's Secretary of Bankrupts, a declaration in writing, signed by such trader, and attested by an attorney or solicitor, that he is insolvent, or unable to meet his engagements, the said secretary or his deputy shall sign a memorandum that such declaration had been filed, which shall be authority for the printer of the London Gazette to insert an advertisement of such declaration therein; and every such declaration shall, after such advertisement, be an act of bankruptcy committed by such trader at the time when such declaration was filed; but no commission shall issue thereupon, unless it be sued out within *two calendar months* next after the insertion of such advertisement, and unless such advertisement shall have been inserted in the London Gazette within *eight days* after such declaration was filed; and no docket shall be struck upon such act of bankruptcy before the expiration of four days next after the insertion of such advertisement, in case such commission is to be executed in London; or before *eight days* after such insertion, in case such commission is to be executed in the *country*: and the Gazette containing such advertisement shall be evidence to be received of such declaration having been filed.

No commission shall be deemed invalid by reason of

such declaration having been concerted or agreed upon between the bankrupt and any creditor or other person.

If any such trader, liable to become bankrupt, shall, after a docket struck against him, pay to the person or persons who struck the same, or any of them, money, or give or deliver to any such person any satisfaction or security for his debt, or any part thereof, whereby such person may receive more in the pound in respect of his debt than the other creditors, such payment, &c. shall be an act of bankruptcy; and if any commission shall have issued upon the docket so struck, the Lord Chancellor may declare such commission valid, and direct it to be proceeded in, or may order it to be superseded, and a new commission may issue, and be supported either by proof of such last-mentioned, or of any other act of bankruptcy; and every person so receiving such money, or security as aforesaid, shall forfeit his whole debt, and also repay such money, or security, or the full value, to such person as the commissioners shall appoint, for the benefit of the creditors of such bankrupt.

If any such trader having privilege of parliament, commit any of the aforesaid acts of bankruptcy, a commission may issue against him: and the commissioners, and all other persons may proceed thereon in like manner as against other bankrupts; but such person shall not be subject to be arrested or imprisoned during the time of such privilege, except in cases hereby made felony.

If any creditor of any such trader having privilege of parliament, to such amount as is requisite to support a commission, shall file an affidavit in any Court of Record at Westminster, that such debt is justly due to him, and such debtor, as he verily believes, is such trader as aforesaid, and shall sue out of the same Court a summons, or an original bill and summons, against such trader, and serve him with a copy thereof, if such trader shall not, within *one calendar month* after personal service of such summons, pay, secure, or compound for such debt to the satisfaction of such creditor, or enter into a bond in such sum, with two sufficient sureties, to pay such sum as shall be recovered in such action, with such costs as shall be given, and within one calendar month next after personal service of such summons cause an appearance to be entered to such action in the proper Court in which the same shall have been brought, every such trader shall be deemed to have committed an act of bankruptcy from the time of the service of such summons; and any such creditor or cre-

ditors of such trader may sue out a commission against him, and proceed thereon in like manner as against other bankrupts.

And if any decree or order shall have been pronounced in any cause depending in any Court of Equity, or any order made in any matter of bankruptcy or lunacy against any such trader having privilege of parliament, ordering to pay any sum of money, and such trader shall disobey the same, the person entitled to receive such sum, or interested in enforcing the payment thereof, may apply to the Court to fix a peremptory day for the payment, which shall accordingly be fixed by an order for that purpose; and if such trader, being personally served with it eight days before the day therein appointed, shall neglect to pay the same, he shall be deemed to have committed an act of bankruptcy from the time of the service thereof.

Of the Commission, and Proceedings under it.

The Lord Chancellor has power, upon petition made to him in writing against any trader having committed any act of bankruptcy, by any creditor of such trader, to appoint such persons as he thinks fit, who shall have full power and authority over the person of the bankrupt, and over all his lands, tenements, and hereditaments, within this realm and abroad, and over all his money, fees, offices, annuities, goods, chattels, wares, merchandise, and debts, wheresoever they may be found or known, for satisfaction and payment of the creditors.

The petitioning creditor, before any commission is granted, must make an affidavit in writing before a master ordinary or extraordinary in Chancery (to be filed with the proper officer), of the truth of the debt; and give bond to the Lord Chancellor in the penalty of £200, for proving the debt before the commissioners, and upon any trial at law, and for proving the party to have committed an act of bankruptcy at the time of taking out such commission, and to proceed on such commission; but if such debt is not really due, or if, after the commission is taken out, it be not proved that the party had committed an act of bankruptcy, and if it also appear the commission was fraudulent or malicious, the Lord Chancellor shall examine into the case, and order satisfaction to be made; for the better recovery of which, he may assign such bond to the party aggrieved, who may sue for the same in his or their name or names.

The petitioning creditor, at his own costs, must sue forth

and prosecute the commission, until the choice of assignees; and the commissioners will then direct the assignees to reimburse such costs out of the first money got in under the commission; and bills of solicitors for business done after the choice of assignees, are to be settled by the commissioners, except that part which contains any charge for actions at law, or suits in equity, which must be settled by the proper officer, and paid by the assignees; but if any creditor, to the amount of £20, is dissatisfied, he may have any such bills settled by a Master in Chancery, who shall receive twenty shillings for such settlement.

No such commission can be issued, unless the single debt of the creditor, or of two or more partners, petitioning for the same, amounts to £100, or unless the debt of two creditors shall amount to £150, or unless the debt of three creditors shall amount to £200; and where credit was given upon valuable consideration for a sum payable at a time, not arrived when an act of bankruptcy is committed, the party may petition or join in petitioning, whether he has any security in writing for such sum, or not.

Any creditor, whose debt is sufficient to entitle him to petition for a commission against all the partners of a firm, may petition for a commission against one or more partners of such firm; and in commissions against two or more persons, the Lord Chancellor may supersede such commission as to one or more.

If, after a commission against two or more members of a firm, any other commission be issued against any other member of such firm, such other commission must be directed to the commissioners to whom the first was directed; and, after the adjudication, the commissioners must assign all the estate of such bankrupt to the assignees chosen in the first commission; after which conveyance all separate proceedings under such other commission shall be stayed.

If, after adjudication, the debt of the petitioning creditor be found insufficient to support a commission, the Lord Chancellor, upon the application of any other creditor, having proved debt sufficient to support a commission, not incurred anterior to the debt of the petitioning creditor, may order the commission to be proceeded in.

The Lord Chancellor may direct an auxiliary commission for proof of debts under £20, and for the examination of witnesses on oath; and the examinations must be taken down in writing, and annexed to the original commission.

No commissioner is capable of acting, until he has taken an oath to the effect following:—

"I, A. B. do swear, that I will faithfully, impartially, and honestly, according to the best of my skill and knowledge, execute the several powers and trusts reposed in me as a commissioner, in a commission of bankruptcy against and that without favour or affection, prejudice or malice. So help me God."

This oath the commissioners are empowered to administer to one another.

The commissioners are paid 20*s*. each, for every meeting, and the like sum for every deed of conveyance executed by them, and for the signature of the bankrupt's certificate; and, in the country, every commissioner receives a further fee of 20*s*. for each meeting; and where the residence of the commissioner is seven miles from the place of meeting, he receives a further sum of 20*s*. for every meeting. And commissioners who receive any further sum, or who eat or drink at the charge of the creditors, or of the bankrupt, or order any such expense to be made, are disabled for ever from acting in future.

At meetings in the country, wherein any one or more of the commissioners may be barristers, such as attend, not exceeding three at each meeting, are the acting commissioners, and entitled to their summonses and fees, in priority to commissioners who are not barristers.

The commissioners may summon any person whom they believe capable of giving information concerning the trading, or of any act or acts of bankruptcy committed by the bankrupt, and require persons so summoned to produce books, papers, deeds, and other documents, which may be necessary to establish such trading or act of bankruptcy; and examine such persons upon oath, by word of mouth, or interrogatories in writing; and persons not coming before the commissioners, or refusing to be sworn, and examined, or not fully answering to the satisfaction of the commissioners, or refusing to sign or subscribe their examination, or refusing to produce or not producing the books, &c. are liable to penalties.

The commissioners, after they have adjudged a bankrupt, must forthwith cause notice of such adjudication to be given in the London Gazette, and shall thereby appoint three public meetings for the bankrupt to surrender and

conform, the last of which meetings shall be on the forty-second day.

No commission shall abate by reason of a demise of the crown, and if, by the death of commissioners, or any other cause, it becomes necessary, any commission may be renewed, but only half the fees usually paid upon obtaining commissions shall be paid for the same; and if any bankrupt shall die after adjudication, the commissioners may proceed as if he were living.

Any person appointed by the commissioners may break open the house, premises, trunk, or chest of any bankrupt, where such bankrupt or any of his property are reputed to be, and may seize upon the body or property of such bankrupt; and if the bankrupt be in prison or in custody, it is lawful for the person so appointed, to seize any property (his necessary wearing apparel only excepted) in the custody or possession of the bankrupt, or of any other person, in any prison.

Where there is reason to suspect that property of the bankrupt is concealed in any place not belonging to such bankrupt, a justice of peace is authorised to grant a search-warrant to the person so deputed, who may execute the same in like manner.

After adjudication, it shall be lawful for the commissioners to summon before them any person known or suspected to have any of the estate of the bankrupt in his possession, or who is supposed to be indebted to the bankrupt, or any person whom the commissioners believe capable of giving information concerning the dealings or estate of the bankrupt; and may require such person to produce any books, &c. in his custody or power; and if such persons so summoned shall not come, having no lawful impediment, the commissioners may authorise and direct such persons to be apprehended and brought before them to be examined.

Persons who are so summoned shall have such costs as the commissioners think fit; and must have their necessary expenses tendered, in the manner now required upon service of a subpœna in an action at law.

The commissioners may summon any bankrupt before them, whether such bankrupt shall have obtained his certificate or not; and in case he shall not come at the time appointed (having no lawful impediment), the commissioners may direct him to be apprehended, and brought before them; and upon the appearance of such bankrupt, they may examine him upon oath, touching all matte

relating either to his trade, dealings, or estate, or which may tend to disclose any secret grant, conveyance, concealment of his lands, tenements, goods, money, or debts, and to reduce his answers into writing, which the bankrupt shall sign; and if such bankrupt refuse to be sworn, or to answer any questions, or to sign his examination, they may commit him to prison.

The commissioners may summon the wife of any bankrupt, and may examine her, for the same purpose; and she incurs the same penalty for not coming, or refusing to be sworn, or to sign her examination, or not fully answering to the satisfaction of the commissioners, as is provided against other persons.

If any gaoler suffer the bankrupt or other person so committed to escape, he shall forfeit £500.

And if any person be committed by the commissioners for refusing to answer, or for not fully answering any question, they shall in their warrant specify every such question: provided, that if any person committed shall bring any *habeas corpus* in order to be discharged, and there shall appear on the return of such *habeas corpus* any such insufficiency in the form of the warrant whereby such person was committed, by reason whereof he might be discharged, the Court or judge before whom such party shall be brought may commit such person to the same prison, until he shall conform, unless it shall be shewn that he has fully answered all lawful questions; unless it shall appear to such Court or judge that he had a sufficient reason; and if it appear from the whole examination that the answer or answers of the party committed are satisfactory, the Court may order the party to be discharged.

All actions against commissioners must be commenced within three calendar months next after the fact committed; and in the event of judgment in their favour, can recover double costs.

The commissioners may appoint one or more persons as assignees of the bankrupt's estate, or of any part thereof, who may be removed at the meeting for the choice of assignees, and assignees so removed must deliver up all the estate of the bankrupt come to their possession to the assignees so chosen; and, if such first assignees shall not, within ten days after notice given to accept, make such assignment, each assignee shall forfeit £200.

At all meetings appointed for proof of debts (whereof ten days' notice shall have been given in the London

Gazette), every creditor may prove his debt by his own oath; bodies politic and public companies may prove by an agent; and creditors living remote may prove by affidavit, before a Master in Chancery; creditors out of England, by affidavit sworn before a magistrate where such creditor resides.

Every person with whom any bankrupt shall have really and *bonâ fide* contracted any debt or demand before the issuing the commission, is, notwithstanding any prior act of bankruptcy committed by such bankrupt, admitted to prove, and be a creditor under such commission, as if no such act of bankruptcy had been committed, provided such person had not, at the time the debt was contracted, notice of any act of bankruptcy committed.

When any bankrupt shall have been indebted, at the time of issuing the commission against him, to any servant or clerk, in respect of wages or salary, the commissioners may order not exceeding six months' wages to be paid out of the estate; and such servant or clerk is at liberty to prove for any sum exceeding that amount.

And where any person shall be an apprentice to a bankrupt at the time of issuing of the commission, the issuing of such commission is a complete discharge of the indentures; and the commissioners may order any reasonable sum to be paid to the apprentice, regard being had to the fee paid on behalf of such apprentice, and to the time the apprentice has resided with the bankrupt.

Where there has been mutual credit given by the bankrupt and any other person, or where there are mutual debts between the bankrupt and any other person, one debt may be set against another; and what shall appear due on either side on the balance of such account, and no more, shall be claimed or paid on either side.

Any person who shall have given credit to the bankrupt upon valuable consideration, not become payable when the bankrupt committed an act of bankruptcy, is entitled to prove any debt, bill, bond, note, or other security, as if the same was payable presently, and receive dividends equally with the other creditors, deducting only thereout a rebate of interest for what he shall so receive, at the rate of five per cent. to be computed from the declaration of a dividend, to the time such debt would have become payable.

Any person who at the issuing the commission is surety or liable for any debt of the bankrupt, or bail for the bankrupt, either to the sheriff or to the action, if he shall

have paid the debt, or any part thereof in discharge of the whole debt (although he may have paid the same after the commission issued) if the creditor shall have proved his debt under the commission, is entitled to stand in the place of such creditor as to the dividends and all other rights under the said commission which such creditor possessed; or, if the creditor has not proved under the commission, such surety or person liable, or bail, is entitled to prove his demand in respect of such payment as a debt under the commission. not disturbing the former dividends, and may receive dividends with the other creditors, although he may have become surety, liable, or bail as aforesaid, after an act of bankruptcy committed; provided that such person had not, when he became such surety or bail, or so liable as aforesaid, notice of any act of bankruptcy committed.

If a bankrupt, before the issuing of the commission, has contracted a debt payable upon a contingency which shall not have happened before the issuing of such commission, the person with whom such debt has been contracted may, if he think fit, apply to the commissioners to set a value upon such debt, and the commissioners are required to ascertain the value thereof, and to admit such person to prove the amount.

In commissions against any persons liable upon any bill of exchange or promissory note, the holder is entitled to prove for interest.

If any plaintiff in any action at law or suit in equity, or petition in bankruptcy or lunacy, shall have obtained any judgment, decree, or order against any person who shall thereafter become bankrupt for any debt or demand in respect of which such plaintiff or petitioner shall prove under the commission, such plaintiff or petitioner shall also be entitled to prove for the costs, although such costs shall not have been taxed at the time of the bankruptcy.

No creditor who has brought any action, or instituted any suit against any bankrupt, in respect of a demand prior to the bankruptcy, or which might have been proved as a debt under the commission, shall prove a debt under such commission, or have any claim entered upon the proceedings under such commission, without relinquishing such action; and in case such bankrupt shall be in prison or custody at the suit of such creditor, he shall not prove or claim as aforesaid, without giving a sufficient authority in writing for the discharge of such bankrupt; and the proving or claiming a debt under a commission, shall be

deemed an election to take the benefit of such commission, with respect to the debt so proved; provided, that such creditor shall not be liable to the payment to such bankrupt, or his assignees, of the costs of such action so relinquished by him; and that where any such creditor shall have brought any action or suit against such bankrupt, jointly with any other person or persons, his relinquishing such action shall not affect such action against such other person: provided also, that any creditor who shall have so elected to prove or claim, if the commission be afterwards superseded, may proceed in the action as if he had not so elected, and in bailable actions shall be at liberty to arrest the defendant *de novo*, if he has not put in bail below, or perfected bail above, or if the defendant has put in or perfected such bail, to have recourse against such bail, by requiring the bail below to put in and perfect bail above within the first eight days in term, after notice in the London Gazette of the superseding such commission, and by suing the bail upon their recognizance, if the condition thereof is broken.

And whenever it shall appear to the assignees, or to two or more creditors, who have each proved debts to the amount of £20, or upwards, that any debt proved under the commission is not justly due, either in whole or in part, they may make representation thereof to the commissioners; who may summon before them and examine upon oath any person who shall have so proved, together with any person whose evidence may appear material, either in support of or in opposition to any such debt; and if the commissioners, upon the evidence given on both sides, (or if the person who shall have so proved as aforesaid shall not attend to be examined, having been first duly summoned, or notice having been left at his last place of abode) shall be of opinion that such debt is not due, either wholly or in part, they shall be at liberty to expunge the same, either wholly or in part: provided, that such assignees or creditors requiring such investigation shall, before it is instituted, sign an undertaking, to pay such costs as the commissioners shall adjudge, such costs to be recovered by petition: provided also, that such assignees or creditors may apply in the first instance by petition to the Lord Chancellor, or that either party may petition against the determination of the commissioners.

Of the Assignees.

At the second meeting, or any adjournment thereof, assignees shall be chosen: all creditors who have proved debts to the amount of £10, being entitled to vote; and also any person authorised by letter of attorney, as aforesaid; and the choice shall be made by the major part in value of the creditors: provided, that the commissioners shall have power to reject any person so chosen who shall appear to them unfit, and upon such rejection a new choice shall be made.

In all commissions against one or more of the partners of a firm, any creditor to whom the bankrupt is indebted, jointly with the other partner or partners of the said firm, or any of them, shall be entitled to prove his debt under such commission, for the purpose only of voting in the choice of assignees, and of assenting to or dissenting from the certificate; but such creditor shall not receive any dividend out of the separate estate of the bankrupt or bankrupts, until all the separate creditors shall have received the full amount of their respective debts, unless such creditor shall be a petitioning creditor in a commission against one member of a firm.

The commissioners shall assign to the assignees, for the benefit of the creditors, all the present and future personal estate of such bankrupt, before he shall have obtained his certificate; with all debts due or to be due to the bankrupt.

The commissioners must also convey to the assignees all lands, tenements, and hereditaments, except copy or customaryhold, in England, Scotland, Ireland, or in any of the dominions, plantations, or colonies belonging to his Majesty, to which any bankrupt is entitled, and all interest to which he is entitled, before he shall have obtained his certificate, with all deeds, papers, and writings respecting the same.

The commissioners must also make sale of any lands, tenements, and hereditaments, situate either in England or Ireland, whereof the bankrupt is seised of any estate tail in possession, reversion, or remainder, and whereof no reversion or remainder is in the crown, the gift or provision of the crown.

The Lord Chancellor may, upon petition, order any conveyance or assignment either of the real or personal estate of the bankrupt, made either to assignees appointed by the commissioners, or chosen by the creditors, and any

enrolment thereof, to be vacated, provided that no title of any purchaser, under any conveyance prior to such order, be thereby affected, and that no estate previously barred be thereby revived; and the Lord Chancellor may order the commissioners to execute new assignments of the debts and effects disposed of by the then assignee, or assignees to any other person to be chosen by the creditors as aforesaid, or to execute a new conveyance of the real estate unsold or not conveyed to such person or persons, and in such manner as he shall direct; and if such new assignment shall be ordered, the debts and personal estate of the bankrupt shall be thereby vested in such new assignees. And the commissioners shall, in the two London Gazettes next after the removal of such assignee or assignees, and such new appointment, cause advertisements to be inserted, giving notice of such removal and appointment, and directing persons indebted to the bankrupt's estate not to pay any debt to the assignee or assignees so removed.

Whenever an assignee shall die, or a new assignee or assignees shall be chosen, no action at law or suit in equity shall be thereby abated, but the Court may, upon the suggestion of such death or removal and new choice, allow the name of the surviving or new assignee or assignees to be substituted in the place of the former.

The commissioners have power to make sale of any copyhold or customaryhold lands, or of any interest to which any bankrupt is entitled therein, and thereby to entitle or authorise any person or persons on their behalf to surrender the same for the purpose of any purchaser or purchasers being admitted thereto; but every person, to whom any sale of copyhold or customary lands or tenements shall be made, must, before they take any profit, compound with the lords of the manors for fines, dues, and other services usually paid for the same, and thereupon the said lords must grant the said customary lands or tenements for such estate or interest as shall have been sold as aforesaid, reserving the ancient rents, customs, and services, and admit him tenant of the same.

If any bankrupt has granted, conveyed, assured, or pledged any real or personal estate, or deposited any deeds, such grant, conveyance, assurance, pledge, or deposit, being upon condition or power of redemption at a future day, by payment of money or otherwise, the assignees may, before the time of the performance of such condition, make tender or payment of money, or other

performance, according to such condition, as the bankrupt might have done, and after such tender may dispose of such real or personal estate for the benefit of the creditors.

If any real or personal estate or debts of any bankrupt be extended after he has become bankrupt, under pretence of his being an accountant of or debtor to the king, the commissioners may examine whether the debt was due upon any contract originally made between such accountant and the bankrupt; and if the contract was made with any other person, or in trust for any other person, the commissioners may dispose of such estate or debts for the benefit of the creditors; and any person to whom the said estate or debts has been sold, granted, or assigned by the commissioners, may recover against any person who shall detain the same.

If any bankrupt, at the time of his bankruptcy, has, by the consent and permission of the true owner, in his possession any goods or chattels, whereof he was reputed owner, or whereof he had taken upon him the disposition as owner, the commissioners may dispose of the same: provided, that nothing shall invalidate any assignment of any ship or vessel, or any share thereof, made as a security for any debt or debts, either by way of mortgage or assignment, duly registered according to the provisions of the 4 Geo. IV. intituled "*An Act for the registering of vessels.*"

If any bankrupt, when insolvent, (except upon the marriage of any of his children, or for valuable consideration) has assigned to any person, any hereditaments, offices, fees, annuities, leases, goods, or chattels, or made over any bills, bonds, notes, or other securities, or have transferred his debts to any other person, the commissioners may dispose of the same.

No distress for rent levied after an act of bankruptcy upon the effects of any bankrupt (before or after the issuing of the commission) shall be available for more than one year's rent, but the landlord may come in as a creditor for the overplus of the rent due.

Any bankrupt entitled to any lease or agreement for a lease, if the assignees accept the same, shall not be liable to pay any rent after the date of the commission, or to be sued for any subsequent non-observance of covenants; and if the assignees decline the same, the bankrupt is not liable, if he deliver up such lease of agreement within fourteen days after notice that the assignees have declined: and if the assignees, on being required, do not elect whether they will accept or decline such lease or

agreement, the lessor is entitled to apply by petition to the Lord Chancellor, who may order them to elect; and if they decline, he may make such order as he shall think fit.

If any bankrupt has entered into an agreement for the purchase of any interest in land, the vendor, or other person claiming under him, if the assignees, on being required, do not elect whether they will abide by such agreement, may apply to the Lord Chancellor, who may order them to deliver up the agreement, and possession of the premises, or make such order as he shall think proper.

All powers vested in any bankrupt (except the right of nomination to any vacant ecclesiastical benefice) may be executed by the assignees for the benefit of the creditors.

The Lord Chancellor may, on the petition of the assignees, or of any purchaser of any part of the bankrupt's estate, if such bankrupt shall not try the validity of the commission, or if there shall have been a verdict establishing its validity, order the bankrupt to join in conveyance of such estate; and if he shall not execute such conveyance, he and all persons claiming under him shall be stopped from objecting to the validity of such conveyance; and all title shall be as effectually barred by such order as if the conveyance had been executed by the bankrupt.

If any bankrupt be possessed of any real or personal estate, or any interest arising out of the same, or have standing in his name, as trustee, any government funds, or the stock of any public company, the Lord Chancellor may, on the petition of the person or persons entitled in possession to the receipt of the produce thereof, on due notice given to all other persons (if any) interested therein, order the assignees, and all persons whose act or consent thereto is necessary, to convey the said funds to such persons as he shall think fit, upon the same trusts as before the bankruptcy, and to receive and pay over the produce thereof, as he shall direct.

If any bankrupt has any government stock, or the stock of any public company, standing in his name in his own right, the commissioners, by writing under their hands, may order all persons whose consent is necessary, to transfer the same into the name of the assignees, and to pay all dividends to such assignees.

All conveyances by, and contracts with any bankrupt *bonâ fide* entered into more than two calendar months before the issuing of the commission, and all executions and attachments against the lands or goods of such bankrupt,

bonâ fide levied more than two calendar months before the issuing of such commission are valid; provided, the persons so dealing with such bankrupt, or at whose suit such execution has issued, had not, at the time of such dealing, notice of any prior act of bankruptcy: provided also, that where a commission has been superseded, if any other commission shall issue against any person or persons comprised in such first commission, within two calendar months after it shall have been superseded, no such transaction shall be valid, unless entered into more than two calendar months before the issuing *the first* commission.

And all payments really and *bonâ fide* made, or which shall be made *to*, or *by* any bankrupt, or by any person on his behalf, before the date and issuing of the commission, to any creditor (such payment not being a fraudulent preference of such creditor), shall be deemed valid, notwithstanding any prior act of bankruptcy.

The issuing of a commission is notice of a prior act of bankruptcy (being an act of bankruptcy actually committed before the issuing the commission), if the adjudication of persons against whom such commission has issued, has been notified in the London Gazette, and the persons affected by such notice may reasonably be presumed to have seen the same.

No person, body corporate, or public company, having in their possession any effects belonging to any bankrupt, are endangered by reason of the payment or delivery thereof to the bankrupt or his order; provided, such person or company had not notice that such bankrupt had committed an act of bankruptcy; but if any accredited agent of any body corporate or public company has had notice of any act of bankruptcy, the body corporate or company are deemed to have had such notice.

No purchase from any bankrupt *bonâ fide* and for valuable consideration, even where the purchaser had notice at the time of such purchase of an act of bankruptcy, shall be impeached by reason thereof, unless the commission is sued out within *twelve* calendar months after such act of bankruptcy.

No title to any real or personal estate sold under any commission, or order in bankruptcy, shall be impeached by the bankrupt, or any person claiming under him, unless the bankrupt commences proceedings to supersede the commission, and prosecutes the same, within *twelve* calendar months from the issuing thereof.

The assignees, with the consent of the major part in

value of the creditors who have proved at any meeting, whereof twenty-one days' notice has been given in the London Gazette, may compound with any debtor to the bankrupt's estate, and take any reasonable part of the debt in discharge of the whole, or give time or take security for the payment, or submit any dispute between such assignees and any persons, concerning any matter relating to such bankrupt's estate, to the determination of arbitrators, to be chosen by the assignees and the major part in value of such creditors, and the party with whom they shall have such dispute, and the award of such arbitrators shall be binding on all the creditors: the assignees are indemnified for what they do; and no suit in equity shall be commenced by the assignees without such consent as aforesaid: provided, that if one-third in value or upwards shall not attend at any such meeting, the assignees, with the consent of the commissioners in writing, may do any of the matters aforesaid.

In any commission against any one or more member or members of a firm, the Lord Chancellor may authorise the assignees to prosecute any action at law, or suit in equity, in the names of such assignees and of the remaining partner or partners, against any debtor of the partnership; and if such partner or partners execute any release of the debt, such release is void: provided that every such partner is indemnified against the payment of any costs in respect of such action or suit; and the Lord Chancellor may, on the petition of such partner, direct him to receive so much of the proceeds of such action or suit as he shall think fit.

In any action by or against any assignee, or against any commissioner, or person acting under their warrant, no proof shall be required of the petitioning creditor's debt, or of the trading or act of bankruptcy, unless the other party, at or before pleading, or before issue joined, gives notice in writing to such assignee, commissioner, or other person, that he intends to dispute such matters; and if such notice has been given, or if such assignee prove the matter so disputed, or the other party admit the same, the judge may grant a certificate of such proof or admission; and such assignee, &c. is entitled to costs, taxed by the proper officer, occasioned by such notice, and such costs will be added to the costs, and if the other party shall obtain a verdict, shall be deducted from the costs which such other party would otherwise be entitled to receive from such assignee, &c.

In all suits in equity by or against the assignees,

proof is required at the hearing of the petitioning creditor's debt, or of the trading or act of bankruptcy, as against any of the parties in such suit, except such parties, within ten days after rejoinder, give notice in writing to the assignees of their intention to dispute such matters; and where such notice has been given, if the assignees prove the matter disputed, the costs, if the Court see fit, must be paid by the parties giving such notice, the service of which may be proved by affidavit.

If the bankrupt (if within the United Kingdom at the issuing of the commission) does not, within two calendar months after the adjudication, or (if out of the United Kingdom) within twelve calendar months, give notice of his intention to dispute the commission, and proceed therein with due diligence, the depositions taken before the commissioners previous to the adjudication of the petitioning creditor's debt, and of the trading and acts of bankruptcy, are conclusive evidence of the matters therein respectively contained in all actions at law, or suits in equity, brought by the assignees.

If the assignees commence any action or suit for money due to the bankrupt before the time allowed for him to dispute the commission has elapsed, any defendant, after notice given to the assignees, may pay the same, or any part, into Court, and all proceedings with respect to the money so paid are thereupon stayed, and, after the time has elapsed, the assignees may have the same paid to them out of Court.

All persons from whom the assignees shall have recovered any real or personal estate, are thereby discharged, if the commission be afterwards superseded, from all demands in respect of such debts; and all persons who, without action or suit, *bonâ fide* deliver up possession of any real or personal estate to the assignees, or pay any debt claimed by them, are discharged from all future claim: provided the notice to try the validity of the commission had not been given, and proceeded in within the time and in manner aforesaid.

All things done pursuant to the 5 Geo. II. where it is enacted that the Lord Chancellor should appoint a place where all matters relating to commissions of bankruptcy should be entered of record, and appoint a person to have the custody thereof, are confirmed by the last statute.

In all commissions issued after this Act has taken effect, no commission of bankruptcy, adjudication of bankruptcy by commissioners, or assignment of the personal estate of

the bankrupt, or certificate of conformity, can be received as evidence in any Court of Law or Equity, unless the same has been first so entered of record as aforesaid; and the person so appointed to enter matters of record, shall be entitled to receive for such entry of every such commission, adjudication of bankruptcy, assignment, or order for vacating the same respectively, the fee of 2*s*. each, and for the entry of every certificate of conformity, 6*s*.

In every action, suit, or issue, office copies of any original instrument or writing filed in the office, or officially in the possession of the Lord Chancellor's Secretary of Bankrupts, is evidence of every such original instrument or writing; and if any such original instrument is produced on any trial, the costs of producing the same shall not be allowed on taxation, unless the production was necessary.

All commissions of bankruptcy, and all deeds, conveyances, assignments, surrenders, admissions, and other assurances of any freehold, leasehold, copyhold, or customary messuages, lands, or tenements, or any mortgage, charge, or other incumbrance upon, or any estate, right, or interest of and in any messuages, lands, tenements, or personal estate, of or belonging to any bankrupt, or part thereof, and which, after the execution of such deeds, &c. shall, either in law or in equity, be the property of such bankrupt, or the assignees; and all powers of attorney, and all other instruments and writings whatsoever relating solely to the estate, or effects of any bankrupt, or to any proceedings under any commission of bankrupt, and all advertisements inserted in the London Gazette relating solely to matters in bankruptcy, are not liable to any stamp duty, or any other government duty whatsoever; and sales of any real or personal estate of any bankrupt are not liable to any auction duty.

Any bankrupt or other person who wilfully and corruptly swears falsely, and Quakers who affirm falsely, are liable to the penalties of wilful and corrupt perjury.

Money forfeited under this Act, or by conviction for perjury, may be sued for by the assignees; the money so recovered to be divided among the creditors.

Assignees must keep an account of all payments made on account of the bankrupt's estate, which account every creditor may inspect at seasonable times; and the commissioners may summon the assignees, and require them to produce all books and other documents; and if they do not attend, the commissioners may, by warrant, cause

such assignees to be brought before them; and upon their refusing to produce such books, &c. may commit the party to prison, until they shall submit to the commissioners.

At the choice of assignees, the major part in value may direct how, with whom, and where, money received is to remain until it be divided; and if they do not give any direction, the commissioners must make such direction; but no money can be paid into the hands of any commissioner, or the solicitor to the commission, or into any banking or other house of trade in which any commissioner, assignee, or solicitor is interested.

The commissioners may direct money to be invested in exchequer bills, and direct where such exchequer bills shall be kept, and may direct the proceeds to be laid out in the purchase of exchequer bills, or applied for the benefit of the creditors, subject to the control of the Lord Chancellor.

If any assignee retain in his hands, or employ for his own benefit, or permit any co-assignee so to do, any sum to the amount of £100, of the estate of the bankrupt, or neglect to invest money in the purchase of exchequer bills, when so directed, such assignee is liable to be charged with interest at twenty per cent. for the time he has so acted.

If any assignee indebted to the estate, in respect of money so retained or employed, become bankrupt, and obtain his certificate, it can only free his person from arrest; but his future effects (tools of trade, household goods, and wearing apparel excepted) remain liable for so much of his debts to the estate, as shall not be paid under his commission, with interest for the whole debt.

The commissioners, at the last examination of the bankrupt, must appoint a public meeting, not sooner than four calendar months from the issuing of the commission, nor later than six calendar months from the last examination of the bankrupt, and give twenty-one days' notice in the London Gazette, to audit the accounts of the assignees; and the assignees at such meeting must deliver upon oath a true statement in writing of all moneys received by them respectively, and how the same have been employed; and the commissioners must examine the assignees upon oath, touching the truth of such accounts; the assignees being allowed to retain such money as they have expended in such commission, and other just allowances.

The commissioners, not sooner than four nor later than twelve calendar months from the issuing of the commission,

must appoint a public meeting (by twenty-one days' notice in the London Gazette) to make a dividend, at which meeting creditors who have not proved are entitled to prove; the commissioners at such meeting must order such part of the net produce of the bankrupt's estate in the hands of the assignees, as they think fit, to be divided amongst such creditors as have proved, and make an order for a dividend, and cause one part of such order to be filed amongst the proceedings, and deliver another part to the assignees, which order must contain the time and place of making such order, of the amount of debts proved, the money remaining in the hands of the assignees, how much in the pound is then ordered to be paid, and the money allowed to be retained by the assignees; and the assignees must forthwith make such dividend, and take receipts from each creditor; but no dividend can be declared, unless the accounts of the assignees have been audited upon oath as aforesaid.

No creditor having security for his debt, or attachment in London, or any other place, of the goods and chattels of the bankrupt, shall receive upon any such security, &c. more than a rateable part of such debt, except in respect of an execution or extent served and levied, by seizure upon, or any mortgage or lien upon any part of the property of such bankrupt before the bankruptcy; provided that no creditor, though for a valuable consideration, who shall sue out execution upon any judgment obtained by default, confession, or *nil dicit*, shall avail himself of such execution to the prejudice of other fair creditors, but shall be paid rateably with such creditors.

If the bankrupt's estate is not wholly divided upon the first dividend, the commissioners must, within eighteen calendar months after the commission, appoint a public meeting, (and give twenty-one days' notice in the London Gazette) to make a second dividend, when creditors who have not proved may prove; and the commissioners, after taking such audit as before directed, must order the balance to be divided among such as have proved; such second dividend, being final, unless any action or suit be depending, or part of the estate be not disposed of, or unless some other estate or effects shall afterwards come to the assignees, in which case they shall convert such estate and effects into money, and, within two calendar months after the same is so converted, divide the same in manner aforesaid.

If any assignee has in his own hands, or subject to his

order, any unclaimed dividend, amounting to £50, and does not, within two calendar months after the expiration of one year after the declaration and order of payment of such dividend, either pay to the creditors entitled thereto, or cause a certificate thereof to be filed in the office of the Lord Chancellor's Secretary of Bankrupts, containing a true account of the names of the creditors to whom such unclaimed dividend is due, and the amount of such dividend, signed by the assignee rendering the same, and attested by the solicitor to the commission, or the solicitor to the assignee, such assignee shall be charged interest, from the time such certificate is directed to be filed, at £5 per centum per annum, for such time as he shall retain the same, and such further sum as the commissioners shall think fit, not exceeding £20 per centum per annum; and the Lord Chancellor, or the commissioners, may order the investment of any unclaimed dividends in the public funds, on account of the creditors, subject to such order as the Lord Chancellor may think fit, who may, after the same has remained unclaimed three years, order it to be divided amongst the other creditors; and the proof of the creditors to whom such dividends were allotted shall from thenceforth be considered void as to the same, but renewable as to any future dividends, to place them on equal terms with the other creditors, but not to disturb any dividend which may have been previously made.

No action for any dividend can be brought against the assignees by any creditor who has proved under the commission; but if the assignees refuse to pay any such dividend, the Lord Chancellor may order payment thereof, with interest, and costs of application.

Of the Bankrupt.

If any person against whom any commission has been issued, does not, before three o'clock upon the forty-second day after notice thereof in writing, left at his usual place of abode, or personal notice if such person be in prison, and notice given in the London Gazette of the commission, and the meetings of the commissioners, surrender himself, subscribe such surrender, and submit to be examined, from time to time, upon oath, or solemn affirmation; or if any such bankrupt shall not discover all his real or personal estate; or if any such bankrupt does not deliver up such part of such estate, books, papers, and writings relating thereunto, as are in his possession or power, (except the necessary wearing apparel of

himself, his wife and children); or, if any such bankrupt shall remove, conceal, or embezzle, to the value of £10, or any books of account, or writings, with intent to defraud his creditors, such bankrupt is guilty of felony, and is liable to be transported for life, or for such term, not less than seven years, as the Court may adjudge; or liable to be imprisoned only, or imprisoned and kept to hard labour, for any term not exceeding seven years.

The Lord Chancellor may from time to time enlarge the time for the bankrupt surrendering, every such order being made six days at least before the day on which such bankrupt was to surrender.

The commissioners, before the choice of assignees, and after such choice, the assignees, with the approbation of the commissioners, may make such allowance to the bankrupt, until his last examination, as may be necessary for the support of himself and family.

If any bankrupt apprehended by warrant of the commissioners within the time allowed him to surrender, submits to be examined, he may have the same benefit as if he had voluntarily surrendered.

The bankrupt, after the choice of the assignees, must deliver up to them, upon oath, all books, papers, and writings in his custody, and discover such as are in the custody of any other person; and every such bankrupt, if not in prison, must, at all times after such surrender, attend the assignees upon every reasonable notice, and assist them in making out the accounts of his estate; and after he has surrendered, he may, at all seasonable times before the expiration of forty-two days, or such farther time as shall be allowed to him, inspect his books, papers, and writings, in the presence of his assignees, or any person appointed by them, and bring with him each time any two persons to assist him: and after he has obtained his certificate, he must, upon demand in writing, attend the assignees, to settle any accounts of his estate, and attend any Court of Record to give evidence, or do any act necessary for getting in the said estate, for which attendance he is to be paid 5*s.* per day; and if he shall not attend, or refuse to do any of the matters aforesaid, without sufficient cause, the commissioners may cause him to be committed to such prison as they think fit, until he conform to their satisfaction, or of the Lord Chancellor.

The bankrupt is free from arrest in coming to surrender; and after such surrender, during the forty-two days, and such further time as is allowed for finishing his exa-

mination, provided he was not in custody at the time of such surrender; and if he is arrested for debt in coming to surrender, or within the time aforesaid, he shall, on producing the summons under the hands of the commissioners to the officer who shall arrest him, and giving such officer a copy thereof, be immediately discharged; and if any officer detain any such bankrupt, he shall forfeit to such bankrupt the sum of £5 for every day he is detained, with costs of suit.

The commissioners may, at the last examination, or any adjournment thereof, adjourn such examination *sine die*, and the bankrupt shall be free from arrest for such time, not exceeding three calendar months, as they shall appoint, with like penalty upon any officer detaining the bankrupt.

When any bankrupt is in prison, under any process, the commissioners may, by warrant, cause such bankrupt to be brought before them at any meeting; and if any such bankrupt is desirous to surrender, he shall be so brought up, and the expense paid out of his estate, and such person indemnified by the warrant for bringing up such bankrupt: provided the assignees may appoint any persons to attend such bankrupt from time to time, and to produce to him his books, papers, and writings, in order to prepare an abstract of his accounts, and a statement to show the particulars of his estate and effects previous to his final examination and discovery thereof; a copy of which abstract and statement the said bankrupt shall deliver to them ten days at least before his last examination.

Any person wilfully concealing any real or personal estate of the bankrupt, and who shall not, within forty-two days after the issuing of the commission, discover such estate to the commissioners or assignees, shall forfeit the sum of £100, and double the value of the estate so concealed; and any person who, after the time allowed to the bankrupt to surrender, voluntarily discovers any part of such bankrupt's estate, not before come to the knowledge of the assignees, shall be allowed five per centum thereupon, and such further reward as the major part in value of the creditors may think fit.

Of the Certificate.

Every bankrupt who has duly surrendered, and conformed himself to the laws in force at the time of issuing the commission, is discharged from all debts due by him when he became bankrupt, and from all claims and demands made proveable under the commission, if he obtains a cer-

tificate of such conformity; but such certificate does not release any partner with such bankrupt at the time of his bankruptcy, or who had any joint contract with such bankrupt.

Such certificate must be signed by four-fifths in number and value of the creditors who have proved debts to the amount of £20, or after six calendar months from the last examination, by three-fifths in number and value, or nine-tenths in number; and no such certificate shall be a discharge, unless the commissioners, in writing under their hands and seals, certify to the Lord Chancellor that such bankrupt has made a full discovery of his estate and effects, and conformed as aforesaid; and unless the bankrupt make oath in writing that such certificate and consent were obtained without fraud, and unless such certificate shall be allowed by the Lord Chancellor, against which allowance any of the creditors may be heard.

The commissioners shall not sign any certificate, unless they shall have proof, by affidavit, of the signature of the creditors thereto; and if any creditor reside abroad, the authority of such creditor must be attested by a notary public, British minister, or consul; and such affidavit, &c. must be laid before the Lord Chancellor, with the certificate, previous to the allowance thereof.

Any contract made by any bankrupt or other person for securing the payment of any money due by such bankrupt, as a consideration for such creditor to sign his certificate, is void, and the money agreed to be paid not recoverable.

Any bankrupt who, after his certificate has been allowed, is arrested, or has any action brought against him for any demand proveable under the commission, must be discharged upon common bail, and may plead the cause of action accrued before he became bankrupt; and such bankrupt's certificate is sufficient evidence of the trading, bankruptcy, commission, and other proceedings precedent to the obtaining such certificate; and, if any such bankrupt is taken in execution, or detained in prison for any debt, where judgment has been obtained before the allowance of his certificate, the judge, on such bankrupt's producing his certificate, may order any officer to discharge such bankrupt without fee.

If any person so discharged by such certificate, or who has compounded with his creditors, or been discharged by any Insolvent Act, shall become bankrupt, and obtain such certificate, unless his estate shall produce (after all charges) sufficient to pay fifteen shillings in the pound, such certificate shall only protect his person from arrest

and imprisonment, but his future estate and effects (except his tools of trade and necessary household furniture, and the wearing apparel of himself, his wife, and children), shall vest in the assignees under the said commission, who shall be entitled to receive the same, as they might have seized property of which such bankrupt was possessed at the issuing the commission.

Every bankrupt who has obtained his certificate, if the net produce of his estate pay the creditors ten shillings in the pound, shall be allowed five per cent. out of such produce, provided such allowance shall not exceed £400; and if such produce shall pay twelve shillings and sixpence in the pound, seven pounds ten shillings per cent. provided such allowance shall not exceed £500; and if such produce shall pay fifteen shillings in the pound, ten pounds per cent. provided such allowance shall not exceed £600; but if such produce shall not pay ten shillings in the pound, such bankrupt shall only be allowed so much as the assignees and commissioners think fit, not exceeding three pounds per cent. and £300.

In joint commissions under which any partner obtains his certificate, if a sufficient dividend is paid upon the joint estate and separate estate of such partner, he is entitled to his allowance, although his other partners may not be.

No bankrupt is entitled to his certificate, or to any allowance, and any certificate obtained is void, if such bankrupt loses, by any sort of gaming or wagering, in one day £20, or within one year preceding his bankruptcy £200; or if he has, within one year preceding his bankruptcy, lost £200, by any contract for the purchase or sale of any government or other stock, where such contract was not to be performed within one week after the contract, or where the stock bought or sold was not actually transferred or delivered in pursuance of such contract; or if, after an act of bankruptcy committed, or contemplated, he has destroyed or falsified any books, papers, writings, or securities; or made or been privy to making any fraudulent entries, with intent to defraud his creditors; or if he has concealed property to the amount of £10; or if any person proves a false debt, such bankrupt being privy thereto, or afterwards knowing the same, and not disclosing the same to his assignees within one month after such knowledge, his certificate is also void.

No bankrupt, after his certificate is allowed, is liable to pay or satisfy any debt or demand from which he is discharged by such certificate; nor any demand upon contract, or agreement made or to be made after suing out

the commission, unless such promise or agreement be in writing, signed by the bankrupt, or some person lawfully authorised by such bankrupt.

The assignees, upon request to them by the bankrupt, must declare to him how they have disposed of his real and personal estate, and pay the surplus (if any) to him, his executors, administrators, or assigns. And every bankrupt, after the creditors who have proved under the commission shall have been paid, is entitled to recover the remainder of the debts due to him; but the assignees shall not pay such surplus, until all creditors who have proved under the commission have received interest upon their debts, to be calculated and paid at the rate and in the order following; (that is to say), all creditors whose debts are by law entitled to carry interest, in the event of a surplus, must first receive interest on such debts, calculated from the date of the commission; and after such interest is paid, all creditors who have proved under the commission must receive interest on their debts from the date of the commission, at the rate of £4 *per centum*.

At any meeting of creditors after the bankrupt has passed his last examination, (whereof twenty-one days' notice has been given in the London Gazette), if the bankrupt or his friends make an offer of composition, or give security for such composition, which nine-tenths in number and value of the creditors assembled at such meeting agree to accept, another meeting for the purpose of deciding upon such offer shall be appointed, whereof such notice as aforesaid shall be given; and if, at such second meeting, nine-tenths in number and value of the creditors then present agree to accept such offer, the Lord Chancellor shall and may, upon such acceptance being testified by them in writing, supersede the commission.

And, in deciding upon such offer as aforesaid, any creditor whose debt is below £20, is not to be reckoned in number, but the debt must be computed in value; and any creditor to the amount of £50, residing out of England, must be personally served with a copy of the notice of the meeting to decide upon such offer as aforesaid, so long before such meeting as that he may have time to vote thereat: such creditor being entitled to vote by letter of attorney, executed and attested in manner required for such creditors voting in the choice of assignees: and if any creditor agrees to accept any gratuity or higher composition for assenting to such offer, he shall forfeit the debt due to him, together with such gratuity or composition; and the bankrupt shall (if required) make oath, that

there has been no such transaction between him, or any person with his privity, and any of the creditors, and that he has not used any undue means or influence with any of them to attain such assent as aforesaid.

This Act must be construed beneficially for creditors; and nothing therein contained is to alter the practice in bankruptcy, except where such alteration is expressly declared; it extends to aliens, denizens, and women; and all powers thereby given to, or duties directed to be performed by the Lord Chancellor, may be exercised by a lord keeper, or lords commissioners of the great seal; and all powers given to, or duties directed to be performed by the commissioners or assignees, may be exercised and performed respectively by the major part of the commissioners, or by one assignee, where only one is chosen. This Act does not extend to Scotland or Ireland, except where those parts of the kingdom are expressly mentioned.

This Act began to take effect on the 1st of September, 1825; and still regulates the *principles* on which bankruptcy is dealt with, although the 1 & 2 Wm. IV. c. 56, has had the effect of altering the *method* of proceeding, which we are now about to insert.

THE LAW AND PRACTICE

OF

THE NEW COURT OF BANKRUPTCY.

THE New Court of Bankruptcy consists of a chief justice, of ten years standing at the bar; three other judges, of ten years standing, or five years at the bar and five years previous practice as special pleaders; and six commissioners, of seven years standing, or four years at the bar and three years previous practice as special pleaders.

These judges and commissioners are all appointed by the King, and hold their offices "during good behaviour."

Every judge and commissioner, before capable of acting, must take the oath specified in the 8th section, in the presence of the Lord Chancellor, in lieu of the oath directed to be taken by the Bankrupt Act by each commissioner under every commission.

The judges and commissioners, as well as the registrar, and other officers of the court, are to receive salaries provided by the 50th section of the Act, in lieu of all fees and emoluments whatever; (except in the case of the registrars, and other officers, under the 48th and 49th sections, as to the surplus, if any, of the fees specified in the schedules annexed to the Act;) as the Act declares that if any judge or commissioner shall take, or allow to be taken for him, any fee, or sum of money, or any thing of value, other than is allowed by the Act, he shall forfeit £500, and be rendered incapable of holding any office or place whatsoever under his Majesty, his heirs, or successors.

There are three divisions of the Court of Bankruptcy, *viz.*—

1. *The Commissioners' Courts*, which are six in number, as each of the commissioners sits separately to transact business.

The fiat of the Lord Chancellor, or of the Master of the Rolls, Vice-Chancellor, or one of the masters in chancery, acting under the appointment of the Lord Chancellor, is the foundation of the proceedings before the Commissioners' courts. Upon this fiat being filed and entered of record in the Court of Bankruptcy, any one or more of the commissioners may proceed thereon, in all respects, as commissioners executing a commission of bankrupt, except as altered by the Act.

Any commissioner by whom an adjudication of bankruptcy has been made, may appoint two or more public meetings, for the bankrupt to surrender and conform; the last of which meetings is to be on the forty-second day after the publication of the bankruptcy in the Gazette. The choice of assignees is to be on the first of such two meetings.

Any commissioner may also adjourn the examination of any bankrupt or other person, either to a Subdivision Court or the Court of Review; and may also adjourn the examination of a debt to a Subdivision Court.

He may also direct issues to try the validity of debts in dispute, and send them for trial by a jury before the chief judge, or one or more of the other judges, if both parties consent to have such issue tried—but if one party only apply for such issue, the commissioner shall decide whether or not such trial shall be had, subject to an appeal as to such decision to the Court of Review.

2. *The Subdivision Courts* are two in number, each consisting of three commissioners, and possessing the powers

to hear and determine the matters and things, and make the examinations directed by the Act—and to decide such matters as have been referred or adjourned to such Sub-division Court; to take the examination of a bankrupt or other person who has been committed by a single commissioner to the custody of a messenger or other officer of the court, and the adjourned examination of any bankrupt or other person on other occasions; and may also proceed with the examination of a proof of debt, (adjourned by a commissioner to this court), and finally, and without appeal, (except upon matter of law or equity, or the refusal or admission of evidence) determine upon such proof of debt.

3. *The Court of Review* is the principal division of the new court, and consists of the chief judge and the three other judges before described, or of any three of these four judges.

It has superintendence and control in all matters of bankruptcy, and also jurisdiction and power to hear and determine, order and allow, all such matters in bankruptcy as now usually are, or lawfully may be, brought by petition or otherwise before the Lord Chancellor.

From the Court of Review there may be an appeal to the Lord Chancellor on matters of law and equity, or the refusal or admission of evidence only. Such appeal must be on a special case, and in no other mode, (except the Lord Chancellor shall otherwise direct;) and shall be heard by the Lord Chancellor alone, and not by any other judge of the Court of Chancery.

No appeal is allowed from the Court of Review, on its order for the removal of an assignee.

If the Lord Chancellor shall consider any matter of sufficient importance to require the decision of the House of Lords, or if both parties in the Court of Review desire any such matter may be determined in the first instance by the House of Lords, and not by the Lord Chancellor, then the Lord Chancellor or the Court of Review may direct all the facts to be stated in a petition to the House of Lords; but in such appeals, the cases shall be confined, in matter of fact, to setting forth the special case brought up to the Lord Chancellor from the Court of Review; and, on appeals from the Court of Review, to setting forth a special case, and to such arguments on the point of law as the parties may be advised to state.

MODE OF PROCEDURE IN THE COURT OF BANKRUPTCY.

OF STRIKING THE DOCKET AND OBTAINING THE FIAT.

When a trader has committed an act of bankruptcy, and his creditor is desirous of obtaining a fiat, in order that the trader may be adjudged bankrupt, the docket-book at the bankrupt office is to be searched, to ascertain whether a docket has been already struck against the trader by any other person. If not, the creditor (whose debt must amount to £100, or if two creditors join, to £150, or if more than two, to £200,) is to make an affidavit of his debt, and of his belief that the debtor is become bankrupt. In a town case, this affidavit is sworn before a master in chancery: if the creditor reside in the country, before a master extraordinary in chancery. The creditor next executes the usual bond; (conditioned to prove his debt and the bankruptcy of the debtor;) in a town case, at the bankrupt office; if in the country, the bond is there executed and transmitted, with the affidavit, to an agent in London. The affidavit and bond are then deposited at the bankrupt office, and an entry is made in the docket-book, and these several proceedings are termed "striking the docket." Upon the affidavit and bond being left at the bankrupt office, the petition from the creditor to the Lord Chancellor for the fiat, (or rather for permission to prosecute the claim,) is prepared by the clerks at the office, and thereupon the Lord Chancellor (or the Master of the Rolls, Vice-Chancellor, or one of the masters in chancery acting under the appointment of the Lord Chancellor for that purpose) may issue his fiat under his hand, instead of the former commission of bankrupt, authorising the petitioning creditor to prosecute his complaint in the Court of Bankruptcy, or elsewhere, before such discreet and proper persons as the Lord Chancellor, &c., by such fiat may nominate and appoint; and the persons so appointed, shall have the same powers and authorities as if they were appointed special commissioners under the great seal.

If the fiat be issued in a town case, (or within forty miles of London,) it will be directed to the Court of

Bankruptcy, and in such case, the fiat must be filed and entered of record in the court, and the case is to be there prosecuted.

If the matter occur in the country, or beyond the bills of mortality, the fiat will be directed to one or more of the persons acting as commissioners in rotation, according to their districts.

If any trader, adjudged bankrupt, dispute such adjudication, he must present a petition, praying the reversal thereof, to the Court of Review, within two calendar months, if he shall be within the United Kingdom; or within three calendar months, if in any other part of Europe; or within one year, if then residing elsewhere; and the matter shall be decided by the Court of Review, within one year; or on the finding security for costs, if the court require it, an issue may be directed to try any matter of fact relating to such adjudication, by a jury before any of the four judges of the court.

If the adjudication shall not be set aside on the petition, or if the verdict of such jury shall not be set aside on application to the Court of Review, within one month after the trial, such adjudication, or verdict, shall be conclusive evidence that the party was or was not a bankrupt at the date of such adjudication, against the bankrupt, the petitioning creditor, his assignees, and all persons claiming under them and his creditors.

After such issue shall have been tried, the Lord Chancellor, on petition within one month after such verdict, and upon notice thereof to the bankrupt, may order another fiat to issue at the instance of any other person than the former petitioning creditor, such fiat to be supported by any other debt, trading, or act of bankruptcy, than those given in evidence on the trial of such issue; and if the Lord Chancellor reverse an adjudication, or order that any fiat may be rescinded and annulled, such order shall have the force of a writ of *supersedeas*.

When a commissioner has made an adjudication, he must appoint two or more public meetings, for the bankrupt to surrender and conform.

An official assignee is also to be assigned to the estate by the judges of the court, to take possession of the personal estate of the bankrupt, and the proceeds of his real and personal estate, and to transfer and pay all stock and monies into the Bank to the credit of the accountant-general.

The usual proceedings under a commission of bank-

rupt are then to be pursued before a single commissioner.

Creditors, if they live in England, may prove their debts by affidavit, sworn before one of the judges or commissioners, or before a master in chancery, ordinary or extraordinary; but if they live out of England, by affidavit sworn before a magistrate, where such creditor shall be residing, and attested by a notary public, or consul, subject however to such orders, touching the personal attendance of the creditor, as shall hereafter be made.

Assignees may be removed by the Court of Review; and their order on this point is not subject to any appeal.

If assignees refer a matter with consent of creditors, such reference may be made a rule of the court, &c.

OF FEES AND COSTS.

For every fiat under this Act, there shall be paid to the secretary of bankrupts the sum of ten pounds.

The sum of twenty pounds is to be paid to the accountant-general by every official assignee, out of the first monies of each bankrupt's estate, after the choice of assignees by the commissioners.

All costs of suit between party and party in the Court of Review shall be in the discretion of the court, and shall be taxed by one of the masters of the Court of Chancery.

OF COUNTRY COMMISSIONERS.

A material alteration in the mode of appointing country commissioners hitherto practised, is provided for by the present Court Act.

When the commission was to be executed in the country, (where the bankrupt resided more than forty miles from London,) the commissioners were nominated by the solicitor who sued out the commission; but the manner in which the persons who are to act as commissioners under fiats not directed to the Court of Bankruptcy, are hereafter to be appointed, is as follows:—The Lord Chancellor may direct the judges who go the several circuits in England and Wales, to return to him the names of such number as he shall think fit to require, of barristers,

solicitors, and attorneys, practising in the counties belonging to the several circuits; and on these persons being returned and approved of by the Lord Chancellor, they will become permanent country commissioners, and the fiat or fiats, not directed to the Court of Bankruptcy, shall be directed to some one or more of them, according to their several districts, in rotation.

SECRETARY OF BANKRUPT'S FEES.

	£.	s.	d.
For every docket struck, and not acted upon ..	1	12	6
For every renewed fiat	0	12	0
For every petition of appeal answered for hearing	0	13	6
For every order on hearing	1	5	0
For every previous minute of order	0	3	6
For every warrant for advertising declaration of insolvency	0	2	6
For every certificate of a fiat issued to authorise advertisements in the Gazette	0	2	6
For every search made for fiat or other proceeding	0	1	0
For filing affidavits and other documents	0	1	0
For copies of affidavits, orders, and other proceedings, per folio of ninety words	0	0	1½

REGISTRAR'S FEES.

On filing every fiat	0	1	0
For every certificate of bankrupt's conformity..	0	6	6
On entering every appeal for hearing in the Court of Review	0	2	0
For every order pronounced by that court	1	5	0
For every previous minute or order	0	2	6
For entering every matter for hearing in a Subdivision Court	0	1	0
For every order pronounced there	0	5	0
For fees on the trial of every issue, to be paid by the successful party	2	0	0
For every search made in the court	0	1	0
For filing affidavits, and other documents	0	1	0
For copies of affidavits, orders, and other proceedings, per folio of ninety words	0	0	1½
For every subpœna *ad test.* and other writ issued out of the court	0	2	0

FORMS AND PRECEDENTS,

SETTLED BY THE NEW COURT, AND TO BE ADOPTED IN PRACTICE.

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1. *Affidavit for Town Fiat.*

make oath that justly and truly indebted unto th deponent in the sum of for . And th deponent further sa , that the said become bankrupt within the true intent and meaning of some or one of the statutes in force concerning bankrupts, as th deponent believe .

Sworn at
this day of
one thousand eight hundred
and before me .

2. *Town Bond.*

KNOW ALL MEN, That held and firmly bound to the right honourable the Lord High Chancellor of Great Britain in two hundred pounds of good and lawful money of Great Britain to be paid to the said Lord Chancellor, or his certain attorney, executors, administrators, or assigns; to which payment well and truly to be made bind heirs, executors, and administrators, firmly by these presents. Sealed with seal. Dated this day of in the year of our Lord one thousand eight hundred and

THE CONDITION of this obligation is such, that if the above bounden shall prove, as well before his Majesty's Court of Bankruptcy under a fiat in bankruptcy against as upon a trial at law in case the due issuing of the said fiat be tried, That the said justly and truly indebted to the said in the sum of pounds, or upwards, and become bankrupt; and if the said shall cause the said fiat to be executed according to law; then this obligation to be void, or else to be in full force.

Sealed and delivered in the presence of

3. Petition for Fiat for Town.

To the right honourable the Lord High Chancellor of Great Britain.

The humble petition of on behalf of and all other the creditors of

SHEWETH,

That the said being trader and indebted unto your petitioner in the sum of pounds and upwards, did lately commit an act of bankruptcy within the true intent and meaning of the laws concerning bankrupts, and that your petitioner filed such affidavit and given such bond as is by law required.

Your petitioner therefore most humbly pray that your lordship will be pleased to issue your fiat, authorising your petitioner as such creditor as aforesaid to prosecute complaint in his Majesty's Court of Bankruptcy.

And your petitioner shall ever pray, &c.

4. Affidavit in a Country Bankruptcy.

make oath that justly and truly indebted unto th deponent in the sum of for

And th deponent further sa , that the said become bankrupt within the true intent and meaning of some or one of the statutes in force concerning bankrupts, as th deponent believe . And that the fiat of bankruptcy sought to be issued against when obtained is intended to be executed at or within ten miles of the same, and not within forty miles of London.

Sworn at
this day of
one thousand eight hundred
and before me

Do hereby certify that the commissioners to be named in a fiat of bankruptcy intended to be issued against the said are not nor is either of them to the best of knowledge and belief creditors or a creditor of the said intended bankrupt .

Solicitor to the petitioning creditor.

5. *Country Bond.*

KNOW ALL MEN, that held and firmly bound to the right honourable the Lord High Chancellor of Great Britain in two hundred pounds of good and lawful money of Great Britain to be paid to the said Lord Chancellor, or his certain attorney, executors, administrators, or assigns; to which payment well and truly to be made bind heirs, executors, and administrators, firmly by these presents. Sealed with seal. Dated this day of in the year of our Lord one thousand eight hundred and

THE CONDITION of this obligation is such, that if the above bounden shall prove, as well before the major part of the persons appointed to act as commissioners of bankrupt under a fiat in bankruptcy against as upon a trial at law in case the due issuing of the said fiat be tried, That the said justly and truly indebted to the said in the sum of pounds, or upwards, and become bankrupt; and if the said shall cause the fiat to be executed according to law; Then this obligation to be void, or else to be in full force.

Sealed and delivered in the presence of }

6. *Petition for Fiat for Country Commissioners.*

To the right honourable the Lord High Chancellor of Great Britain.

The humble petition of on behalf of and all other the creditors of

SHEWETH,

That the said being trader and indebted unto your petitioner in the sum of pounds and upwards, did lately commit an act of bankruptcy within the true intent and meaning of the laws concerning bankrupts, and that your petitioner filed such affidavit and given such bond as is by law required.

Your petitioner therefore, most humbly pray that your lordship will be pleased to issue your fiat, authorising your petitioner as such creditor as aforesaid to prosecute complaint before such discreet and proper persons as your lordship, by such fiat, may think fit to nominate and appoint to act as commissioners of bankrupt in that behalf.

And your petitioner shall ever pray, &c.

7. Fiat for Town and Country Bankruptcy.

Upon reading the petition made to me by against as trader indebted to the said petitioner in pounds and upwards, and as having committed an act of bankruptcy, and the said petitioner having made such affidavit and given such bond as by law required, I hereby authorise the said petitioner to prosecute complaint, in his Majesty's Court of Bankruptcy, [*or*, before and esqrs. and , , and gentlemen, or before three or more of them, whom I hereby nominate and appoint to act as commissioners,] in that behalf. Dated this day of one thousand eight hundred and thirty .

[To his Majesty's Court of Bankruptcy.]

[*Signature of the Lord Chancellor.*]

8. Affidavit of Searching Gazettes.

In the matter of against whom a fiat in bankruptcy has issued.

maketh oath and saith that a fiat in bankruptcy bearing date the day of one thousand eight hundred and issued against C. D. of on the petition of of directed to his Majesty's Court of Bankruptcy, [*or*, to . and esqrs. and gentlemen, commissioners of bankrupt, in the county of .]

And this deponent further saith that he has searched the London Gazettes from the day of to the day of inclusive, being a period of days, and doth not find in any of them that the said C. D. has been declared bankrupt.

Sworn at
this day of
one thousand eight hundred
and before me

9. Petition to annul Fiat, and for new Fiat.

In the matter of against whom a fiat of bankruptcy has issued.

To the right honourable the Lord High Chancellor of Great Britain.

The humble petition of

Sheweth, That a fiat in bankruptcy, bearing date on or about the day of one thousand eight

hundred and issued against of on the petition of of , directed to his Majesty's Court of Bankruptcy [*or*, to and esqrs. and gentlemen, therein appointed to act as commissioners of bankrupt, in the said county of .]

That your petitioner has caused the London Gazettes to be searched from the day of to the day of inclusive, being a period of days, as by the affidavit of hereunto annexed appears, but that it does not appear in any of such Gazettes that the said C. D. has been adjudged bankrupt.

That your petitioner has made an affidavit that the said justly indebted unto him in the sum of one hundred pounds and upwards, and is ready to enter into the usual bond to your lordship, to ground another fiat in bankruptcy against the said which your petitioner hereby undertakes to prosecute with effect for the benefit of himself and the rest of the creditors of the said

Your petitioner, therefore, most humbly prays that your lordship will be pleased to order the fiat so issued on the petition of the said A. B. to be forthwith rescinded and annulled, and that a new fiat in bankruptcy may issue for that purpose against the said C. D., directed to the said Court of Bankruptcy, [*or*, &c.] upon the petition of your petitioner.

And your petitioner shall ever pray, &c.

10. *Petition by Bankrupt to annul Fiat on reversal of Adjudication.*

To the right honourable the Lord High Chancellor of Great Britain.

The humble petition of Y. Z. of

SHEWETH, That a fiat in bankruptcy, bearing date on or about the day of 18 issued against C. D. of on the petition of A. B. directed to his Majesty's Court of Bankruptcy, under which the said C. D. was adjudged bankrupt by C. F. W., esq. one of the commissioners of the said court, on or about the day of but that such adjudication was, on or about the day of reversed by the Court of Review in Bankruptcy, [or stating other ground for annulling the fiat].

Your petitioner, therefore, most humbly prays that your lordship will be pleased to order the fiat so issued on the petition of the said A. B. to be forthwith rescinded

and annulled, and that a new fiat in bankruptcy may issue, directed to (*his Majesty's said Court of Bankruptcy*,) [*or*, &c.] against the said C. D. on the petition of your petitioner.

And your petitioner shall ever pray, &c.

11. *Chancellor's Order to annul Fiat on 19th Section.*

WHEREAS my fiat in bankruptcy, issued against C. D. of bearing date, &c. on the petition of A. B. of whereby the said A. B. was authorised to prosecute his complaint in his Majesty's Court of Bankruptcy, [*or*, before certain persons therein appointed to act as commissioners of bankrupt in the county of .] And whereas the said C. D. was afterwards adjudged a bankrupt under the said fiat. But because such adjudication has been since reversed by his Majesty's Court of Review in Bankruptcy, [*or*, but because, &c. stating other grounds for annulling the fiat; *or*, without stating particularly, for other good and sufficient cause apparent to me,] I have since thought it fit to rescind and annul the said fiat, I do, therefore, hereby order that the said fiat be and the same is hereby rescinded and annulled accordingly.

Dated this day of 183 .

BROUGHAM AND VAUX, C.

12. *Title of Proceedings in a Town Fiat.*

Proceedings in his Majesty's Court of Bankruptcy, under the fiat, dated the day of 18 against on the petition of now filed and entered of record in the said court.

13. *Title of Proceedings under existing Commission.*

Proceedings in his Majesty's Court of Bankruptcy, under a commission of bankrupt under the great seal, dated the day of 18 against on the petition of by virtue of which commission since which the said commission has been removed into this court according to the statute.

14. *Deposition as to the Trading.*

In the Court of Bankruptcy.

At the Court of Commissioners of Bankrupt, in Basinghall-street, London, on the day of 18 , before .

In the matter of against whom a fiat, bearing date the day of was duly issued.

being sworn and examined, at the time and place abovementioned, before esq. a commissioner of the said court, upon his oath saith, that he has known the said for the space of now last past, during which time the said did use and exercise the trade and business of and sought and endeavoured to get h livelihood thereby, as others of the same trade and business usually do.

15. *Deposition as to Petitioning Creditor's Debt.*

In the Court of Bankruptcy.

At the Court of Commissioners of Bankrupt, in Basinghall-street, London, on the day of 18 , before

In the matter of against whom a fiat, bearing date day of was duly issued.

being sworn and examined at the time and place abovementioned before esq. a commissioner of the said court, upon his oath saith, that the said w on and before the day of and still justly and truly indebted unto this deponent

16. *Deposition as to Act of Bankruptcy under the 3d Section of Bankrupt Act.*

In the Court of Bankruptcy.

At the Court of Commissioners of Bankrupt, in Basinghall-street, London, on the day of 18 before

In the matter of against whom a fiat bearing date the day of was duly issued.

being sworn and examined at the time and place abovementioned, before esq. a commissioner of the said court, upon his oath saith, that [*insert, as the fact may be, the act of bankruptcy committed by the bankrupt.*]

17. *Deposition as to Act by Declaration of Insolvency.*

In the Court of Bankruptcy.[f]

At the Court of Commissioners of Bankrupt, in Basinghall-street, London, on the day of 18 before .

In the matter of against whom a fiat, bearing date the day of was duly issued.

being sworn and examined at the time and place abovementioned, before esq. a commissioner of the said court, upon his oath saith, that the said on the day of last, in the presence of this deponent, made and signed a declaration, that the said w in insolvent circumstances and unable to meet engagements with creditors. And this deponent further saith that aforesaid named in the London Gazette, of the day of last, as an insolvent the same person as the named in the said commission of bankrupt.

18. *Adjudication of Bankruptcy.*

In the Court of Bankruptcy.

At the Court of Commissioners of Bankrupt, in Basinghall-street, London, on the day of 18 before

In the matter of against whom a fiat, bearing date the day of was duly issued.

commissioner of the said court, upon good proof upon oath before me, this day taken, do find that the said became bankrupt within the true intent and meaning of the statutes, made and now in force, concerning bankrupts, before the day of being the day of the date, and suing forth of the fiat against the said And I do therefore declare and adjudge bankrupt accordingly.

19. *Advertisement of Adjudication, &c.*

WHEREAS a fiat in bankruptcy is awarded and issued forth against . and being declared bankrupt hereby required to surrender to esq. a commissioner of his Majesty's Court of Bankruptcy on at the Court of Bankruptcy in Basinghall-street, London, and make a full discovery and disclosure of estate and effects; when, and where, the creditors are to

come prepared to prove their debts, and at the first sitting to choose assignees, and at the last sitting, the said bankrupt required to finish examination, and the creditors are to assent to, or dissent from, the allowance of certificate. All persons indebted to the said bankrupt, or that have any of effects, are not to pay or deliver the same, but to whom the commissioners shall appoint, but to give notice to

20. *Bankrupt's Summons.*

WHEREAS a fiat in bankruptcy, dated the day of 18 has issued against you And you having been duly declared bankrupt by me, a commissioner of his Majesty's Court of Bankruptcy, I, the said commissioner, do hereby summon and require you the said personally to be and appear before me the said commissioner, on the day of at of the clock in the noon, at the Court of Bankruptcy, in Basinghall-street, London, then and there to be examined, and to make a full and true discovery, and disclosure, of all your estates and effects, according to the direction of the Act of Parliament now in force concerning bankrupts; made and passed in the sixth year of the reign of his late Majesty King George the Fourth, intituled "An Act to amend the Laws relating to Bankrupts." And herein fail not at your peril.

Given under my hand this day of 18

To the abovenamed bankrupt.

21. *Memorial of Surrender of Bankrupt.*

At the Court of Commissioners of Bankrupt, in Basinghall-street, London, on the day of 18 before

In the matter of against whom a fiat, bearing date the day of was duly issued.

Be it remembered, that the within named came and surrendered to me, a commissioner of his Majesty's Court of Bankruptcy, under the fiat issued against h and submitted to be examined from time to time before me, touching a discovery and disclosure of estate and effects; but not being now prepared to make a full discovery and disclosure of estate and effects, prayed further time for that purpose, which I have granted accordingly, until the day of at this place.

22. *Second Memorial for further Time.*

At the Court of Commissioners of Bankrupt, in Basinghall-street, London, on the day of 18 before

In the matter of against whom a fiat, bearing date the day of was duly issued.

Be it remembered, that the said again came before me, but not being prepared, prayed further time, which was granted accordingly, until the day of at this place.

23. *Witness's Summons.*

By virtue of a fiat in bankruptcy, bearing date the day of issued against directed to his Majesty's Court of Bankruptcy. These are to will and require you, and every of you, to whom this warrant is directed, personally to be and appear before me, the said commissioner, on at the Court of Bankruptcy in Basinghall-street, London, then and there to be examined by me, by virtue of the said fiat, and the statute in such case made and provided. And hereof, you are not to fail at your peril.

Given under my hand this day of 18

24. *Warrant of Seizure.*

WHEREAS a fiat in bankruptcy, dated the day of one thousand eight hundred and hath been awarded and issued forth, against directed unto his Majesty's Court of Bankruptcy. And I a commissioner of the said court, having begun to put the said fiat into execution, upon good proof upon oath, before me taken, have found that the said did for last past use and exercise the trade of in buying and selling the same in the way of and have also found that by reason of such dealings became indebted unto And being indebted as aforesaid the said became bankrupt to all intents and purposes within the true intent and meaning of the statute made and now in force against bankrupts, before the date and issuing forth of the said fiat. These are therefore by virtue of the said fiat, and the statute in such case made and provided, to will and require, authorise and empower you, and every one of

you, to whom this warrant is directed, forthwith to enter into and upon the house and houses of the said and also in all other place and places belonging to the said where any of goods are, or are suspected to be; you shall seize all the ready money, jewels, plate, household stuff, goods, merchandise, books of accompts, and all things whatsoever, belonging to the said And such things as you shall so seize, you shall cause to be inventoried and appraised, by honest men of skill and judgment, and the same you shall return to me with all convenient speed. And what you shall so seize, you shall safely detain and keep in your possession, until I shall give you orders for the disposal thereof, and in case of resistance, or of not having the key or keys of any door or lock belonging to the said where any of goods are or are suspected to be, you shall break open, or cause the same to be broken open, for the better execution of this warrant.

Given under my hand and seal, this day of in the year of our Lord one thousand eight hundred and

To messenger and to his assistants, and to all mayors, bailiffs, constables, headboroughs, and to all other his Majesty's loving subjects; whom I require to be aiding and assisting in the execution of this my warrant, as occasion shall require.

These forms having been settled by the Court, will of course be generally used, as far as they reach, in all cases, and they bring the proceedings to the first meeting.

On bespeaking the fiat, you pay £1. 12*s*. 6*d*. to the deputy secretary of bankrupts, (as stated in p. 284,) and upon the granting of the fiat £10., towards which the above sum of £1. 12*s*. 6*d*. is taken into account.

The fiat being obtained, the bond must be entered into. The bond requires no stamp; but must be executed and attested in the usual mode. If it is a country bond, the master extraordinary is usually one of the witnesses.

This done, the messenger must obtain the appointment of a commissioner to proceed in the business; and on a country fiat, must first take the oath required by 1 & 2

Wm. IV. c. 56, s. 15, and file a memorial of his thus qualifying, signed by himself, with the proceedings.

The commissioners must then examine the witnesses upon oath, or affirmation, and obtain proof in writing of the petitioning creditor's debt, the proof of the trading, and the description of trader, such as banker, merchant, broker, factor, scrivener, hosier, shoemaker, innkeeper, under-writer, &c.; one form of which, as in No. 14, will suffice.

The acts of bankruptcy must then also be exhibited; such as denial of the bankrupt, departing from his dwelling-house, any fraudulent deed, lying in prison, &c. or by any declaration of insolvency on the part of the bankrupt filed at the Bankrupt's Office.*

Advertisement in the Gazette must be made of any declaration of insolvency, and the Gazette itself is evidence of the declaration having been filed.

Notice must be also given in the Gazette of any composition-deed having been executed, pursuant to the 4th section of the Act: and the trustees must execute the deed within fifteen days after the trader has executed: and an affidavit must be made before the commissioners of any compounding with the petitioning creditor.

When the adjudication is made, a memorandum must be made, and a notice inserted in the London Gazette; and the solicitor had better keep the Gazette among the other proceedings under the bankruptcy; though, by the 16th rule of court, a memorandum of the advertisement is to be made by the registrar, instead of keeping the Gazette.

When the party has been declared a bankrupt, the commissioner must appoint two or more days for public meetings, to receive proof of debts, the choice of assignees, and to take the bankrupt's surrender and examination; the last of which meetings must be on the forty-second day from the advertisement in the Gazette, and he must also execute a warrant of seizure to the messenger, to enable him to take possession of the bankrupt's estate and effects. (See previous form, No. 24.)

A summons is then issued for the bankrupt to surrender, which it is usual for him to do at the first meeting,

* Upon this act of bankruptcy no docket can be struck till after *four* days from the insertion of the advertisement, in *town*, and *eight* in the *country*; and it must issue in eight months, or it cannot be issued upon tha declaration of insolvency.

for the sake of being protected; but he may surrender at the private meeting, and if he does, he will also be protected from that time until he has passed his examination.

FIRST PUBLIC SITTING.

The first public meeting is for the proof of debts, and receiving the bankrupt's surrender, if he chooses to attend; and, by the late Act, for the choice of assignees. If he surrender, a memorandum is made to the following effect:

At the Court of Bankruptcy, &c.

Peter Hasenclever, late of London, but now of Putney, in the county of Surrey, merchant, (late one of the partners in trade with Andrew Seton and Charles Crofts, late of London, merchants, against whom a commission of bankrupt hath been lately awarded and issued,) did, the day and year and place abovesaid, pursuant to notice in the London Gazette for that purpose, surrender himself to A. B. one of the commissioners of the Court of Bankruptcy [*or*, to the commissioner in and by the said fiat named], and submitted himself to be from time to time examined touching the discovery of his estate and effects, and in all things to conform himself according to the direction of the Act of Parliament made in the sixth year of his late Majesty's reign, intituled "An Act to amend the Laws relating to Bankrupts," and to have the benefit thereof. PETER HASENCLEVER.

The said Peter Hasenclever being sworn and examined, the day and year and at the place abovesaid, upon his oath saith, that he is not at present prepared to make a full disclosure and discovery of his estate and effects, and humbly prays a further time for the doing thereof, till the next day appointed in the London Gazette for that purpose. PETER HASENCLEVER.

After the bankrupt has surrendered himself, the commissioner indorses a memorandum thereof upon his surrender, to the following effect, by which he is protected.

At, &c.

The withinnamed Peter Hasenclever, the day and year, and at the place abovementioned, surrendered to me, one of the commissioners of the Court of Bankruptcy, [*or*, if in

a country bankruptcy, "to me whose name is hereunto subscribed, being a commissioner named and authorised in and by a fiat awarded and issued, and now in prosecution against the said Peter Hasenclever,"] and submitted himself to be from time to time examined touching the discovery of his estate and effects, and in all things to conform himself according to the directions of the Act of Parliament made and now in force concerning bankrupts, and declared upon his oath that he was not prepared to make a full disclosure and discovery of his estate and effects, and prayed further time for the doing thereof, which was granted to him accordingly, by A. B.

Creditors living in the country may make an affidavit of their debt before a master in chancery extraordinary, and send the affidavit to their agent in town, who must attend the commissioner at one of the public meetings with the same, when it must be exhibited and filed among the proceedings; but creditors residing abroad, must take care to have their affidavits not only sworn before a magistrate, but attested by a public notary, or the British resident minister.

Form of an Exhibit.

At, &c

Exhibited to me under the bankruptcy of A. B.

[*This is signed by the commissioner.*]

In drawing affidavits to be sworn in the country, care should be taken fully to explain the consideration on which the debt arose, and also to specify the securities in the hands of the creditor, the same as in depositions where the party is present; for if any doubt arises, the party not being present to explain it, his debt is only admitted as a claim, by which means country creditors frequently lose the opportunity of voting in the choice of assignees.

Country creditors may, by letter of attorney, authorise another person to vote for them in the choice of assignees, to sign the certificate, and to receive dividends. In the two first cases it is necessary to have an affidavit of the due execution of the letter of attorney; and the affidavit and letter of attorney are exhibited to the commissioners, and filed among the proceedings; in the latter case, it is usual to leave the power of attorney with the person who pays the dividend.

The creditor himself must either in person or by affi-

davit prove his debt, no agent or servant being permitted to prove for him; but in case of the creditor's absence, an agent or servant may attend and make a claim. If a creditor is not prepared to prove, he may attend in person and only make a claim; but the Court may *order* the *personal* attendance of the creditor to prove his debt, if it think fit.

The Court may also *order* the proof of debt to be made by affidavit, either in whole or in part.

The Court may also summon any person to give proof of the trading; require the production of *books*, &c. and punish persons refusing to attend, or to answer, either verbally or in writing, in the same way as is provided with regard to persons summoned after the adjudication of bankruptcy. Even the *wife* of the bankrupt may be summoned, and compelled to answer under the same penalty.

Form of a Claim by a Creditor.

G. H. of, &c. merchant, claims a debt of £100, due to the said G. H. from A. B. the bankrupt, for goods sold and delivered. G. H.

By a Servant.

C. D. clerk to G. H. of, &c. claims a debt of £100, due to the said G. H. from A. B. the bankrupt, for goods sold and delivered. C. D.

The Depositions of Creditors are made in the following form:—

For Goods sold and delivered.

At, &c.

William Tatnall, of Ironmonger Lane, London, warehouseman, being sworn, &c. upon his oath saith, That Peter Hasenclever, the person against whom this prosecution of bankruptcy is awarded and issued, as being one of the partners, &c. was, at and before the date and suing forth of the same, and still is, justly and truly indebted unto this deponent and William Tatnall, his son and partner, in the sum of £707. 14*s*. 3*d*. for goods sold and delivered; for which said sum of £707. 14*s*. 3*d*. or any part thereof, he this deponent hath not, nor hath his said partner, to his knowledge or belief, received any security or satisfaction whatsoever.

William Tatnall.

By a surviving Partner, for Goods sold.

R. W. of, &c. being sworn, &c. That the said Joseph Greenway was, at and before the date and suing forth of the said commission, and still is, justly and truly indebted unto this deponent, as surviving partner of William Barwell, deceased, in the sum of £100, for goods sold and delivered by this deponent and his said partner in his life-time to the said bankrupt; and for which said sum, or any part thereof, this deponent hath not received, nor did his said partner in his life-time, to the knowledge and belief of this deponent, receive any security or satisfaction whatsoever. R. W.

On a Note of Hand.

Thomas Wagstaff, of, &c. being sworn, &c. That Peter Hasenclever, the person, &c. was, at and before the date and suing forth of the said commission, and still is, justly and truly indebted unto this deponent in the sum of and upwards, for money lent by this deponent to the said Peter Hasenclever, before he became bankrupt; for which said sum of or any part thereof, he this deponent hath not received any security or satisfaction whatsoever, save and except a promissory note, dated the under the hand of the said Peter Hasenclever, whereby he promises to pay this deponent or order, two months after date, the sum of . THOMAS WAGSTAFF.

This is the mode of drawing the deposition, where the creditor himself gave value to the bankrupt for the note or bill. Where *the creditor* gave value to a *third* person, the form is as in the next precedent.

On a Note of Hand made by the Bankrupt, and endorsed to Deponent by a third Person.

S. C. of, &c. being sworn, &c. That the said Joseph Greenway was, at and before the date and suing forth of the said commission, and still is, justly and truly indebted unto this deponent in the sum of £54, upon a promissory note under his hand, dated the 3d day of June, 1833, given by the said bankrupt to one Richard Gowland for £54, payable to him or order three months after date; which note the said Richard Gowland indorsed to Moses Moravia, who indorsed the same to this deponent for goods sold and delivered by this deponent to the said Moses Moravia, and money paid by him on account of the said note to that

amount; and for which said sum of £54, or any part thereof, this deponent hath not received any security or satisfaction whatsoever, save and except the said note.

S. G.

For Wages.

J. L. of, &c. being sworn, &c. That the said Joseph Greenway was, at and before the date and suing forth of the said commission, and still is, justly and truly indebted to this deponent in the sum of £13. 1*s.* for wages due from the said bankrupt to this deponent, and for which said sum of £13. 1*s.* or any part thereof, this deponent hath not received any security or satisfaction whatsoever

J. L.

For Money lent.

William Blake, of, &c. being sworn, &c. That P. H. the person against whom the prosecution of bankruptcy is awarded and issued, was, before the date and suing forth of the said commission, and still is, justly and truly indebted to this deponent in the sum of, &c. for money lent and advanced by this deponent to and for the use of the said bankrupt; for which said sum of, &c. or any part thereof, he the said deponent hath not received any security or satisfaction whatsoever.

William Blake.

Deposition by a Bankrupt and his Assignees.

A. B. late of, &c. against whom a prosecution of bankruptcy is awarded and issued, and now in prosecution, and Thomas Abel, of, &c. and William Blake, of, &c. joint assignees of the estate and effects of the said bankrupt, being severally sworn and examined, the day and year, and at the place aforesaid, upon their respective oaths say, and first this deponent A. B. for himself saith, that Peter Hasenclever, the person against whom this commission of bankruptcy is awarded and issued forth, as being one of the partners, &c. is justly and truly indebted to the said Thomas Abel and William Blake, as assignees of the estate and effects of this deponent, and to the said estate and effects, in the sum of   for, &c. by him this deponent before he became bankrupt; which said sum of   or any part thereof, he this deponent hath not received, nor have or hath the said other deponents, or either of them, to his knowledge or belief, received the said sum of money, or any security or satisfaction for

the same. And these deponents, Thomas Abel and William Blake, upon their several oaths, each speaking for himself respectively say, that they have not, nor hath either of them, received the said sum of or any part thereof, nor any satisfaction or security for the same, to the knowledge or belief of the other of them.

A. B.
THOMAS ABEL.
WILLIAM BLAKE.

Deposition of a Country Creditor, sworn before a Master Extraordinary in Chancery.

In the matter of A. B. and C. D. bankrupts.

A. A. of, &c. maketh oath, That A. B. and C. D. of, &c. against whom, &c. were, at and before the date and suing forth of the same, and still are, justly and truly indebted to this deponent in the sum of one hundred pounds, for principal money lent by this deponent before that time to the said A. B. and C. D.; and in the sum of three pounds for interest for the same. And this deponent saith, that he hath not, nor hath any person to his use, had or received any manner of satisfaction or security whatsoever for all or any part of the said one hundred pounds and interest, other than and except one bond or obligation,* bearing date the fith day of August, one thousand eight hundred and twenty-five, given and entered into by the said A. B. and C. D., unto this deponent, in the penal sum of two hundred pounds. A. A.

Sworn at Tiverton aforesaid, this
13th day of October, 1831, before me,
J. S. a master extraordinary.

20th October, 1831, exhibited to me,
E. E.

For Principal and Interest on a Bond.

A. B. of, &c. being sworn, &c. That C. D. of, &c. the person, &c. was before the date and issuing forth of the same, and still is, indebted to this deponent in the sum of £450, or thereabouts, for principal and interest due to this deponent, by virtue of one bond or obligation, bearing date the day of under the hand and seal of the said C. D., the consideration for which was [here state the consideration]; for which sum of £450, or

* The bond or note, &c. must be sent with the affidavit to be exhibited under the commission, otherwise the debt cannot be proved.

any part thereof, this deponent hath not, nor hath any person to his use, received any satisfaction or security whatever, except the said bond or obligation.

Where bonds, notes of hands, letters of administration, or other securities, are referred to in depositions, they must be forwarded to the commissioners.

There are various other circumstances under which depositions of creditors are made; but these forms will enable parties to frame them to correspond with the facts of their particular cases; and in cases where Quakers are the deposing creditors, of course the *affirmation* must be substituted.

Where no creditors appear to prove debts, a memorandum is made to the following effect:—

In the bankruptcy of A. B.

At, &c.

MEMORANDUM. That I, &c. attended here this day, pursuant to notice in the London Gazette, but the said bankrupt did not appear to surrender himself pursuant to such notice, nor any creditor to prove or claim any debt under the said bankruptcy H. B.

Where the bankrupt does not surrender at the first meeting, a memorandum is made in the following manner:—

In the bankruptcy of A. B.

At, &c.

MEMORANDUM, That I attended here this day, pursuant to notice in the London Gazette for that purpose; but the said A. B. did not surrender himself to me, or make any disclosure or discovery of his estate or effects, or send any excuse why he did not. H. B.

The first meeting is also, by the new Act, appointed for the choice of assignees, the mode of which has been described before; and when they are chosen, the following memorandum is made.

In the bankruptcy of A. B.

At, &c. October 4, 1833.

MEMORANDUM, This being the day appointed in the London Gazette for the choice of assignees of the estate and effects of A. A.; we, whose names are hereunder written, being the major part of the creditors of the said A. A.

present at this meeting, and who have proved our debts to be £10 and upwards, have chosen, and do hereby nominate and choose B. B. and C. C. of London, merchants, to be assignees of the estate and effects of the said A. A.

A. B. for Self and Son.
C. D. for Self and Co.
E. F.

We accept of the said trust, and promise to execute a counterpart of the said assignment.

B. B.
C. C.

If the choice of assignees is adjourned, a memorandum to that effect is also made; and another memorandum is also made of the taxing the solicitor's and messenger's bills, if they are then taxed by the commissioner.

The solicitor's bill, taxed by the commissioner, is to contain all his charges up to the choice of assignees. The messenger's charges, as allowed by the new Act, are as follow:

	s.	d.
Attending the commissioners until the adjudication for warrant of seizure	10	0
Executing the warrant at each place	13	4
Summons to bankrupt to surrender, and duplicate	5	0
Service of summons on bankrupt	6	8
Preparing advertisement for the Gazette, and copy, and attending with, and fee, the same	6	8
Possession from the day of execution of the warrant of seizure to the choice of assignees, and no longer, per day	5	0
Preparing warrant for bringing up the bankrupt from prison; attending commissioner to sign the same, and service on the gaoler	13	4
Summons for assignees to attend audit meeting	6	8
Preparing summonses, and serving same upon the assignees	6	8
Proclaiming bankrupt, when he does not surrender to the commission	3	4

In case of committal by the commissioners,

Taking into custody, and executing their warrant, messenger, and men's attendance, with coach-hire, and expenses	21	0

If, in execution of any of the business abovementioned, the messenger and his man, or either of them, shall be compelled to travel any considerable distance from London, we submit that beside the above fees, and in addition to travelling and other necessary expenses, an allowance should be made for the time employed, at the following rate per day:—

	s.	d.
For the messenger	6	8
For his man	5	0

SECOND PUBLIC MEETING.

At this meeting debts are proved and claimed, and the bankrupt passes his last examination.

Memorandum of the Bankrupt's last Examination.

At, &c.

A. B. late of, &c. merchant, who hath been duly adjudged bankrupt, being come before me, in order to make a full discovery and disclosure of his estate and effects, pursuant to notice in the London Gazette for that purpose given, and being sworn and examined the day and year, and at the place above-said, upon his oath saith, that the several books following, that is to say, &c. severally marked with the letters A. B. &c. and which are now produced and delivered up by this examinant, together with the goods and things seized by and under the said bankruptcy, and the books, papers, and writings, securities for money, goods, and effects, delivered up by this examinant to the assignee chosen under the said bankruptcy, together also with a gold watch and £ in money, do contain and are a full and true disclosure and discovery of all this examinant's estate and effects, both real and personal, and how and in what manner, to whom, and upon what consideration, and at what time or times, he hath disposed of, assigned, or transferred any of his goods, wares, merchandises, money, or other estate and effects, and all books, papers, and writings relating thereto, of which he was possessed, or in or to which he was any ways interested or entitled, or which any person or persons had or hath, or have had in trust for him, or to his use, at any time before or after the issuing of the said commission, or whereby this examinant or his family hath or may have or expect any profit, possibility of profit, benefit, or advantage whatsoever, (ex-

cept only such part of his estate and effects as have been really and *bonâ fide* before sold and disposed of in the way of his trade and dealings, and except such sums of money as have been laid out in the ordinary expense of himself and family). And this examinant further saith, that at the time of this his examination he has delivered to the assignees chosen under the said bankruptcy, all such part of his goods, wares, merchandizes, money, estate, and effects, and all books, papers, and writings relating thereto, as are now in his custody, possession, or power, his necessary wearing apparel, and the necessary wearing apparel of his wife and children only excepted. And this examinant saith, that he hath not removed, concealed, or embezzled any part of his estate, real or personal, nor any books of accounts, papers, or writings relating thereto, with an intent to defraud his creditors. A. B.

MEMORANDUM, The above-mentioned gold watch, &c. and £ in money, were, by consent of the creditors present, returned to the bankrupt.

When a bankrupt is in custody, the assignees must appoint some person to attend him with such of his books, &c. as he may require, to enable him to prepare for his examination, a copy of which he must deliver to the assignees; at their request or order, *ten days* before the examination, and the commissioners may bring him out of prison by their warrant to any meeting public or private.

An order for enlargement of time, when necessary, is obtained from the Lord Chancellor.

If it be necessary to adjourn the last examination of the bankrupt, a memorandum to that effect is drawn up.

If the bankrupt does not surrender himself to the commissioners by three o'clock in the afternoon, the messenger warns him so to do, by a proclamation made by him on the staircase of the court, and if the bankrupt does not surrender himself after this proclamation and warning, a memorandum is made to that effect, and process of outlawry may issue.

THE DIVIDEND.

At the meeting appointed for the last examination, the commissioners must appoint a public meeting, not sooner than four months from the date of the fiat, nor later than six calendar months from the last examination of the

bankrupt, of which public meeting they are to give *twenty-one days' notice* in the *London Gazette*, to audit the accounts of the assignees, at which meeting they may examine the assignees upon oath, as to the truth of the accounts.

They must also, not sooner than four, nor later than twelve calendar months from the issuing of the fiat, appoint a public meeting with twenty-one days' notice in the Gazette, to make a dividend of the estate; and order what part of the net produce in the hands of the assignees which they think fit, to be divided amongst the creditors who have proved their debts, in proportion to their amounts. And if the estate of the bankrupt be not wholly divided at such meeting, a second meeting with similar notice must be called within eighteen calendar months after the issuing of the fiat; and after a further audit, a second dividend must be made in similar proportions.

Before the dividend, the solicitor must have his bill taxed; to obtain which he must take it to the public office and have it entered to be taxed, for which the fee is one shilling. When taxed, he must take it to the master's office, and give notice to the assignees when he means to attend for the taxation. If the assignees do not attend, an oath must be made of the service of the notice upon them, and the master will then proceed to tax the bill, and give a certificate that he has done so, and of the amount at which he has fixed it.

For this the master is entitled to twenty shillings, and the oath of service of the notice is one shilling and sixpence, both of which are allowed in the bill.

In a country bankruptcy, if the commissioners apprehend the assignees are in possession of sufficient effects to make a dividend, they may call upon such assignees to produce their accounts to ascertain the fact; and although the new provisions may render this unnecessary in London, the suggestion may be useful both to creditors and commissioners in places remote from the capital.

It would be unnecessary to insert here the orders for dividend and further or final dividend, because the forms are common, generally kept in blank to be filled up for the occasions when they are required, and involve no question of practice; but it may be useful in some cases to inform country assignees that if they cannot personally attend the commissioners, they may be excused by making and forwarding an affidavit to the following effect:—

M. M. of, &c. and N. N. of, &c. assignees under a joint bankruptcy, against A. A. and B. B. of, &c. and co-partners, make oath, and first, this deponent M. M. for himself saith, that the two sheets of paper hereunto annexed, and respectively signed by him this deponent, do contain a full and true account of all his this deponent's receipts and payments, touching the estate and effects of the said bankrupts, as well joint as separate, under the said bankruptcy; and this deponent further saith, that the several sums therein charged to have been allowed, paid. and expended, have been really and *bonâ fide* allowed. paid, and expended in manner and for the purposes therein mentioned. And this deponent M. M. for himself saith, that the paper writing hereunto also annexed, and signed by him, doth contain a full and true account of all this deponent's receipts and payments, touching the estate and effects of the said bankrupt, as well joint as separate, under the said bankruptcy. And this deponent further saith, that the several sums therein charged to have been allowed, paid, and expended, have been really and *bonâ fide* allowed, paid, and expended in manner and for the purposes therein mentioned. M. M.

Sworn, &c. N. N.

The dividend being declared by the commissioners, it will save the assignees a great deal of trouble in the payment of it, if the solicitor computes the dividends, (*a*) which computation may be entitled

A List of the Debts proved under the Bankruptcy of John Thomas, of, &c. with the amount of each creditor's dividend, on the sum of being the sum ordered to be divided amongst the said creditors after the rate of shillings in the pound.

Names of creditors.	Debts proved.	Dividends.

It is usual to give notice of the time and place they intend to pay the dividend; if by the assignees, the solicitor signs an authority for that purpose to the following effect. This will still be the case in country bankruptcies. In London, the payments will be made at the accountant-general's office.

(*a*) The expense of computing the dividends by the solicitor, and preparing and copying the above list, will be allowed in the assignee's account.

Gentlemen,

Please to pay A. B. of, &c. the sum of being his dividend of shillings in the pound on his debt of proved under the bankruptcy of C. D. of, &c.

Yours, &c. L. M.

To Messrs. E. and F.,
said bankrupts' assignees.

14th July, 1833.

The assignees, upon receiving this authority, pay the creditor, and take a receipt in a book, to the following purport, *viz.*

Received this 15th day of July, 1833, of Messrs. E. and F., assignees of the estate and effects of C. D. of, &c. bankrupt, the sum of being a dividend of three shillings in the pound on my debt of proved under the said bankruptcy. A. B.

If the commissioners are prevented by any sufficient reason from declaring a dividend at the time appointed, they may adjourn it.

In regard to the striking out claims, there has been some doubt entertained whether they ought not to be struck out upon the first dividend, unless the creditor making the claim lays a reasonable ground before the commissioners for their permitting it to continue: but it has been usual to suffer them to remain until the final dividend, when they are struck out as a matter of course, if the creditor does not attend and substantiate them.

Under the 60th section of Geo. IV. c. 16, assignees or creditors may undertake to pay the costs of investigating any debt before the commissioners, for the purpose of getting it disallowed.

THE CERTIFICATE.

After the final examination, the bankrupt who has conformed to what the law requires, is entitled to his certificate; a blank form of which may be obtained from the messenger. Fill up the blanks according to the circumstances; and where the bankrupt surrenders under an order for time, follow the common form to the words, "*to be on the forty-second day*" inclusive, and then add as follows:—

(But by an order of this honourable Court of Review, bearing date the day of last, the time for the said bankrupt's surrendering and finishing his examination was enlarged for forty-nine days),* at which meeting the said A. B. was required to surrender himself to the commissioners of the Court of Bankruptcy, or one of them, and to make a full disclosure and discovery of his estate and effects; and the creditors of the said A. B. were desired to come prepared to prove their debts, and to assent to or dissent from this certificate. And I further certify, that such several sittings were had pursuant to such notice and to such order; and that the said A. B. on the day of last did surrender, &c.

And so go on, and conclude from the certificate in the usual form.

After the creditors have subscribed their names at the foot of the certificate, an affidavit in the following form must be made by the person or persons who saw the signatures signed.

In the matter of John Thomas, a bankrupt.

John Knight, of &c. gentleman, maketh oath, that he this deponent was present and did see T. C. for himself and C. R., C. D. &c. *(put in all the creditors you saw sign)* ten of the creditors of the said bankrupt, severally subscribe their names at the foot of a certain instrument in writing, purporting to be a certificate under the hand and seal of one of the commissioners of the Court of Bankruptcy, that the said John Thomas the bankrupt had in all things conformed himself to the several statutes made and now in force concerning bankrupts, whereby they testify and declare their consent to the said commissioner signing the said certificate, and that the said bankrupt may have such allowance and benefit as are given to bankrupts by an Act of Parliament made and passed in the sixth year of the reign of his Majesty King George the Fourth, intituled, "An Act," &c. and be discharged from his debts in pursuance of the same Act.

Sworn at the Public Office, the day of before me, P. H.

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* The time may now be enlarged from time to time, as often as the Court shall think fit.

If any person sign the bankrupt's certificate by virtue of a letter of attorney, such letter of attorney must be left at the Bankrupts' Office. And the bankrupt himself must make an affidavit, as follows, that the certificate was fairly obtained:—

John Thomas, of, &c. against whom a prosecution of bankruptcy hath been awarded and issued, maketh oath that the certificate, bearing date, &c. under the hand and seal of, &c. whereby he hath certified to the Court of Review, that he this deponent hath in all things conformed himself to the statute made and now in force concerning bankrupts, intituled, "An Act," &c.; and the consent of all this deponent's creditors, who have signed their names at the foot of the said certificate, that the said commissioner might sign the same, and that this deponent might have such allowance and benefit as are given to bankrupts by the said Act, and be discharged from his debts in pursuance of the same Act, were obtained fairly, and without fraud.

RULES AND ORDERS

For regulating the Practice of his Majesty's Court of Bankruptcy, made by the Judges of the Court of Review, with the consent of the Lord Chancellor, this 12th day of January, 1832.

It is ordered that all affidavits and other documents directed to be filed in the Court of Bankruptcy, be filed with the registrars of the Court.

That the registrar's office shall be at the Court of Commissioners of Bankrupts, in Basinghall-street, in the city of London, and shall be kept open daily, Sundays only excepted, in the morning from ten to four, and in the evening from seven to nine.

That attorneys and solicitors shall be admitted and enrolled in the Court of Bankruptcy, by order of the Court of Review.

That every attorney and solicitor of any of the superior courts at Westminster, may be admitted and enrolled in the said Court of Bankruptcy, upon the production of a certificate from the proper officer, and upon filing his own affidavit of his being such attorney or solicitor, and of the

date of his former admission, such affidavit to be sworn by him, if residing in London, or within ten miles thereof, before the Court of Review, and if residing elsewhere, before a master in ordinary or extraordinary in Chancery.

That a roll or book shall be kept by the registrars, where shall be enrolled the names of all attorneys and solicitors admitted in the Court of Bankruptcy, on payment to the registrar of a fee of five shillings for such admission and enrolment. Such fee to be applied in the first instance to the payment of the expense of preparing such roll, and the books necessary for the due registration of the names, and the surplus to the same purpose as the fees in the second schedule of the statute 1 & 2 Wm. IV. c. 56.

That the registrars or their deputies shall forthwith cause to be prepared a proper alphabetical book for the purposes aftermentioned; and that the same shall be publicly kept at the registrar's office, to be there inspected by any such attorney or solicitor as aforesaid, or his clerk, without fee or reward, and that every attorney or solicitor admitted in the Court of Bankruptcy, and residing in London, or within ten miles thereof, shall, upon his admission, enter in such book, in alphabetical order, his name and place of abode, or some other proper place in London, Westminster, or the borough of Southwark, within one mile of the said office, where he may be served with notices, summonses, orders, and rules, in matters depending in the said court; and as often as any such attorney or solicitor shall change his place of abode, where he may be served as aforesaid, he shall make the like entry thereof in the said book; and that all notices, summonses, orders, and rules, which do not require personal service, shall be deemed sufficiently served on such attorney or solicitor, if a copy thereof be left at the place lastly entered in such book, with any person resident at, or belonging to, such place; and if any such attorney or solicitor shall neglect to make such entry, then the fixing up of any notice, or the copy of a summons, order, or rule for such attorney or solicitor, in the office of the chief registrar, shall be deemed as effectual and sufficient as if the same had been served at such place of residence as aforesaid.

All existing commissions, when transferred to the Court of Bankruptcy, shall be duly registered in the registrar's office, in books to be kept for that purpose, and shall be prosecuted before such commissioner as the Court of Review shall appoint.

That the assignees appointed under such commissions shall be at liberty to retain, until further order, the custody of the commission, and proceedings heretofore taken thereon, according to the present practice in bankruptcy.

That all proceedings before the commissioner in the Court of Bankruptcy shall be written on parchment or paper of one uniform size, and shall remain of record in the said court.

That every fiat issued by the Lord Chancellor, to be prosecuted in the Court of Bankruptcy, shall be filed of record in the registrar's office within seven days from the date thereof, and that no appointment for the opening of any such fiat shall be made, until it shall have been so filed.

That upon every application for an appointment for opening any fiat, the registrar shall, in the presence of the solicitor applying for the same, allot such fiat, by ballot, to one of the commissioners of the court, according to the regulations to be from time to time prescribed by the Court of Review, except in cases of second or renewed fiats, which shall go to the same commissioner before whom the former commission or fiat was prosecuted.

That upon the making of an appointment for opening any fiat, the registrar shall, in the presence of such attorney or solicitor, write upon the face of the fiat the name of the commissioner before whom the same is to be opened.

That each fiat shall be prosecuted before the commissioners so appointed, unless otherwise specially ordered by the Court of Review, or one of the judges thereof.

That the commissioners shall sit daily (Sunday and holidays to be hereafter named, only excepted,) at ten o'clock, at the Court of Commissioners of Bankrupt in Basinghall-street, and shall hold their subdivision courts at the same place, as occasion may require.

That a deputy registrar shall attend upon each commissioner to take minutes of, to draw up, and have the charge of, all proceedings before him, under the superintendence of the chief registrar.

That in lieu of attaching a copy of the Gazette to the proceedings in each bankruptcy, the deputy registrar shall make a memorandum of the appearance of the advertisement in the Gazette, and of the date thereof, with proper reference to the file, to facilitate search.

That the official assignees be divided equally among the six commissioners.

That each commissioner shall appoint his class of assig-

nees to act in rotation under the several bankruptcies prosecuted before him; such rotation to be settled by ballot, according to such regulations as aforesaid, except in special cases to be referred by the commissioner adjudicating therein to the other commissioners of his subdivision court, or the Court of Review.

That the same rules for the appointment of official assignees shall be followed as to existing commissioners; but it is recommended, that no official assignee be appointed under commissions already opened, unless there appears good cause for so doing.

That the appointment of any assignee or assignees to any bankrupt's estate, shall be under the hand of the commissioner, and shall remain of record in the said Court of Bankruptcy; and certificates of such appointment under the seal of the court, shall be delivered to such assignee by the registrar, upon application for the same.

That no official assignee shall, either directly or indirectly, carry on any trade or business, or hold or be engaged in any office or employment other than his said office and employment as official assignee.

That each official assignee shall find sureties to the extent of £6000, and shall, together with such sureties, (except where otherwise especially directed by the Court of Review,) execute a joint and several bond to the two registrars for the time being, and the survivor of them, in the penal sum of £6000.

The official assignees to be made liable to the whole amount, and the sureties to be liable together to the like amount, in such proportions as shall be approved of by the Court of Review, provided that no one surety shall be made liable for more than £3000, nor for less than £1000.

That each official assignee shall, on pain of his dismissal, give immediate notice, in writing, to the chief registrar for the time being, of the death or insolvency of either of his sureties; and shall, if required, cause a new bond to be executed to the like amount by another surety, to be approved of as above.

That each official assignee shall follow the instructions of the commissioner under whom he acts, according to the exigencies of each particular case, subject to such directions as shall from time to time be prescribed by the Court of Review.

That each official assignee shall pay into the Bank of England, to the credit of the accountant-general of the

high Court of Chancery, all such sums of money as shall come to his hands, as soon as they shall amount to £100; and at the time of paying in such monies, shall state in writing, delivered therewith, to the cashier of the Bank of England, the date and the amount of the payment, the name of the official assignee making it, the name and description of the bankrupt or bankrupts, and the particular estate to which the money belongs, and that it is to be placed to the credit of the said accountant-general, and of such particular estate, and shall take a receipt for the same from the cashier of the Bank, and carry it to the office of the accountant-general, who will give a proper voucher for such receipt, such voucher to be produced when called for by the commissioners.

That it is recommended to the commissioners to allow the official assignees one per cent. on the monies they respectively receive, and one and a half per cent. more on the monies actually to be divided, subject nevertheless to be increased or diminished in any case under special circumstances to be referred to the Court of Review.

That the messengers shall, upon taking possession, forthwith take an inventory of the bankrupt's effects, but that no appraisement shall be made, or other expenses incurred, without the special direction of the commissioner, until after the appointment of the creditors' assignees.

That all petitions presented to the Court of Review shall be entered at the registrar's office, and that the fiat directing the attendance thereon shall be under the seal of the Court of Bankruptcy, and that the original petition shall, when served, be returned to the registrar on or before the hearing, and be filed of record, and that it shall not be necessary to recite such petitions at length in any order pronounced by the court thereon.

That all the process of the Court of Review shall be under the seal of the Court of Bankruptcy.

That all agreements of reference, to be made rules of the Court of Bankruptcy, shall be so made by order of the Court of Review, and all matters arising thereon shall be heard and determined by the Court of Review.

That all questions respecting the conduct of the officers and practitioners of the Court of Bankruptcy shall be brought before the Court of Review.

That all recognizances to be taken and acknowledged in the Court of Bankruptcy shall be taken and acknowledged before the Court of Review.

That the practice in the Court of Review shall, until

otherwise ordered, be conformed as nearly as may be to the present practice in matters before the Lord Chancellor

That the first Subdivision Court shall consist of Charles Frederick Williams, Joshua Evans, and Robert George Cecil Fane, Esqrs.; and the second Subdivision Court shall consist of John Herman Merivale, Samuel Martin Fonblanque, and Edward Holroyd, Esqrs.

T. Erskine, C. J.
Albert Pell, J.
J. Cross, J.
G. Rose, J.

Approved, Brougham, C.

Jan. 12, 1832.

ADDITIONAL ORDER.

Court of Review, Jan. 12, [1832.]

All commissions of bankrupt heretofore issued, and directed to the first and second lists of commissioners of bankrupt, shall, when removed into the Court of Bankruptcy, be prosecuted before Charles Frederick Williams, Esq.

All commissions directed to the third and fourth lists shall in like manner be prosecuted before John Herman Merivale, Esq.

All commissions directed to the fifth and sixth lists shall in like manner be prosecuted before John Samuel Martin Fonblanque, Esq.

All commissions directed to the seventh and eighth lists shall in like manner be prosecuted before Joshua Evans, Esq.

All commissions directed to the ninth and tenth lists shall in like manner be prosecuted before Edward Holroyd, Esq

All commissions directed to the eleventh list shall in like manner be prosecuted before Charles Frederick Williams, Esq.

All commissions directed to the twelfth list shall in like manner be prosecuted before John Herman Merivale, Esq. and Edward Holroyd, Esq. or one of them.

And all commissions directed to the thirteenth and four-

teenth lists shall in like manner be prosecuted before Robert George Cecil Fane, Esq.

Provided, that in the absence of any commissioner, any other commissioner may sit for him.

By the Court.

The following form for petitions addressed to the Court of Review, has also been issued :—

In the matter of , a bankrupt.

To the right honourable the chief judge, and the other judges of the Court of Review:

The humble petition of, &c.

Sheweth that, &c.

PRINCIPAL ALTERATIONS IN THE LAW OF BANKRUPTCY.

Practitioners will perceive that the following are the principal alterations of the former mode of proceeding.

1. The fiat is substituted for the commission, and the meeting to open the commission is also superseded.

2. The new court displaces the seventy commissioners for London and its vicinity.

3. The introduction of the trial of issues on matters of fact, is a decided improvement on the previous practice.

4. The official assignee supersedes the appointment of provisional assignees in London bankruptcies.

5. The vesting of the property in the assignees, by law, renders assignments and conveyances to them nugatory.

6. There is also a material change in allowing the bankrupt to superintend his estate, and giving him the power of disputing the adjudication in a speedy, cheap, and effectual manner.

7. The dispensation with the *supersedeas*, which is now supplied by the power of the Lord Chancellor to amend the fiat, as stated in p. 282.

8. The alteration of the fees and costs.

9. The change in the series of appeals, with the power of appealing to the House of Lords.

10. That concerted bankruptcies are no longer any ground for superseding or annulling the proceedings.

11. The *fiat* is now a *record* of the court, by being filed therein;—all proceedings under the seal of the new court prove themselves,—and as the certificate of the appointment of the assignees, duly sealed, is evidence of their appointment, the evidence of such appointment is not now required to be proved, as required before by 6 Geo. IV. c. 16, s. 96.

LAWS RELATING TO INSOLVENT DEBTORS.

By the 7 Geo. IV. c. 57, the former Acts for the relief of insolvent debtors, namely, the 1 Geo. IV. c. 119, the 3 Geo. IV. c. 123, and the 5 Geo. IV. c. 61, are repealed; except that the Court now established, and the commissioners and other officers, are to be continued under this Act.

The said Court so continued is a Court of Record for the purposes of this Act; with a seal, for the sealing of all records, proceedings, documents, and copies of the same, as are required to be sealed, and such other records, &c. as it may at any time direct.

The said Court, or any commissioner thereof, may adjourn sittings as may be requisite, administer oaths, examine all parties and witnesses upon oath, and possesses the same powers of compelling the attendance of witnesses, and of requiring and compelling the production of books and writings, as are now possessed by the superior Courts at Westminster; and may order prisoners who petition for relief, or who may be necessary and material witnesses, to be brought before the said Court, as often as requisite; and the said Court, or any commissioner thereof, has power to commit all persons guilty of any contempt, and of fining in a summary way or removing any officers guilty of any negligence, wilful or unnecessary delay, or other misconduct; but the Court has not the power of awarding costs, except in such cases where costs are expressly permitted to be awarded; nor to compel the attendance of any witness, unless the party on whose behalf such witness is required, previously tender such allowance for expenses, as to the Court appears reasonable.

All matters to be heard by the said Court must be heard at the Court House in Portugal Street, Lincoln's Inn Fields, unless the Court appoint any other place; and any one commissioner may hear and determine out of Court all matters relating to any persons who petition for relief, or their effects, or the assignee or assignees thereof, except the hearing, re-hearing, or any examination of any such person.

The sittings of the Court are twice a-week, at least, throughout the year; except, that from the expiration of six weeks from the last day of Trinity term until the 1st of November, the Court has power to regulate its sittings as shall appear necessary for the due administration of

justice; but no adjournment, during that period, can be at any time for more than six weeks.

Three of the commissioners must from time to time make circuits, and attend at the several assize or other places, where prisoners are ordered to appear; and upon the hearing of any prisoner's petition, such commissioner may make such orders, and give such directions, as the Court for the relief of insolvent debtors may make, give, or do; and, in every matter to be inquired into, he has the same power as the said Court; and all judgm nts, rules, orders, directions, and proceedings, must be transmitted to the said Court, signed by such commissioner, to be a record of the said Court.

These circuits must be made three times in each year, if requisite; and the Lord High Treasurer may direct such sums to be paid as appear necessary for the travelling expenses.

The Court must give notice of the time and place of the attendance of such commissioner, in each assize or other town, in the London Gazette, and some newspaper circulated in the county, once in each of the two weeks immediately preceding the time of such attendance: and if on the day appointed such commissioner does not attend, the Court is considered as adjourned to the ensuing day, and so from day to day, until he attends.

No fees must be taken. except such as shall be established by the Court.

Any person in actual custody within the walls of any prison, for any debt, damage, costs, or by reason of any contempt of Court for nonpayment of any sum of money, or of costs taxed or untaxed, either ordered to be paid, or to the payment of which such person would e liable in purging such contempt, or in any manner in consequence or by reason of such contempt, at any time within the space of fourteen days next after the commencement of the actual custody of such prisoner, whethe such commencement shall have been in the same prison, or in any other prison, or the rules or liberties of any prison, or afterwards if the Court shall in any case think reasonable to permit the same, to apply by petition in a summary way for his or her discharge. And in such PETITION must be stated the time and place of the first arrest of such prisoner, an the time of commitment to prison; and if such prisoner shall not have been in the same custody from the time of such first arrest, then the means and manner by which the change f custody of such prisoner has taken place, and also the

name or names of the person or persons at whose suit such prisoner is at the time of presenting such petition detained in custody, and the amount of the debt, sum of money, and of costs as aforesaid, so far as the amount of such costs is ascertained; and also whether such prisoner has at any prior time, and when, petitioned the said Court, or any other Court, for his or her discharge under any Act for the relief of insolvent debtors, or under the Act of the 32 Geo. II. c. 28, and whether such prisoner has or has not obtained any such discharge; and whether such prisoner has at any prior time been declared a bankrupt, and whether such prisoner has obtained his or her certificate; and whether notice has been given to the keeper of the gaol in which he or she shall be confined; of his or her intention to present the said petition (which notice the said prisoner is required to give in writing to the keeper of such gaol); and such prisoner must in such petition pray to be discharged from custody, against the demands for which such prisoner shall be then in custody, and against the demands of all other persons who shall be creditors of such prisoner at the time of presenting such petition: which petition must be subscribed by the prisoner, and forthwith filed in the said Court.

And such prisoner, at the time of subscribing the said petition, must execute a conveyance and assignment to the provisional assignee of all the estate, right, title, interest and trust, in and to all the real and personal estate and effects of such prisoner, except the wearing apparel, bedding, and other such necessaries of such person and his or her family, and the working tools and implements of such prisoner, not exceeding in the whole the value of *twenty pounds*, and of *all future estate*, right, title, interest, and trust of such prisoner in or to any real and personal estate and effects, which such prisoner may purchase, or which may revert, descend, be devised, or bequeathed, or come to him or her, before he or she can become entitled to his or her final discharge, or in case such prisoner obtains his or her discharge from custody without any adjudication being made, then before such prisoner is set at large.

This Act does not extend to any person who is not, at the time of filing his petition, and during all the proceedings thereon, in actual custody within the walls of the prison; unless it appears, by a certificate from some medical person, that such confinement would endanger the health of the prisoner, in which case the Court may dispense with the actual custody.

The filing of the petition of every person in actual custody, who may be subject to the laws concerning bankrupts, is accounted an act of bankruptcy from the time of filing; and any commission issuing against such person, and under which he is declared bankrupt, before the time appointed by the Court, and advertised in the London Gazette, for hearing such petition, or at any time within two calendar months from the time of filing, renders void any conveyance and assignment made in pursuance of this Act.

And where the conveyance and assignment to the provisional assignee is void by such prisoner being declared bankrupt, the said conveyance and assignment, with the petition of the prisoner, must remain of record in the said Court; and the Court may require such prisoner to file his schedule, and cause all things to be done in order to the hearing of the matters of such petition: and, at any time, appoint other assignees as in other cases; and if at any time after the execution of the said conveyance and assignment, he obtains his certificate, the rights, powers, title, and interest of the provisional and other assignees, from and after the obtaining of such certificate, are the same as if the conveyance and assignment executed by such prisoner under this Act had been valid at the time of the execution thereof.

No prisoner who has so petitioned can be discharged out of custody, as to any action, suit, &c. with respect to which an adjudication in the matter of such petition can be made, by any supersedeas, judgment of non-pros, or nonsuit, for want of the plaintiff proceeding therein.

The provisional assignee is to take possession of the estates and effects, &c. and to sell the same, if the Court so direct, paying the costs and expenses out of the proceeds; and to sue in his own name.

The Court may order the provisional or other assignee to pay to any prisoner such allowance for support, as may seem reasonable.

In case of the dismission of the petition, all the acts done before such dismission are valid: and in such case, or in case the conveyance and assignment is avoided by any commission of bankrupt, no action or suit can be commenced against such provisional or other assignee, except to recover any property or effects, detained after an order made by the said Court for the delivery thereof, and demand made.

The Court may appoint assignees being creditors; and

the estate, effects, rights, and powers of such prisoner, vested in the provisional assignee, are immediately conveyed and assigned to the said assignees.

The assignees must, with all convenient speed, get in the estate and effects; and if the prisoner is interested in, or entitled to, any real estate in possession, reversion, or expectancy, it must, within six months, or such other time as the Court directs, be sold by public auction, in such manner, and at such place or places, as shall, thirty days before, be approved by the major part in value of the creditors who met together on notice of such meeting published fourteen days previous in the London Gazette, and also in some daily newspaper printed and published in London, or within the bills of mortality, if the prisoner resided in London or within the bills of mortality, and if elsewhere, then in some printed newspaper which shall be generally circulated in or near the place where such prisoner resided at the time. And in case such prisoner is entitled to any copyhold or customary estate, the assignees may surrender or convey such estate to any purchaser, and the rents and profits in the meantime are to be received by the assignees for the benefit of the creditors, without prejudice to the lord of the manor.

And where persons petitioning are entitled to annuities for their own lives, or other uncertain interests, or to reversionary or contingent interests, or to property under such circumstances that the immediate sale thereof may be prejudicial, and it may be proper to authorise the raising of money by way of mortgage, instead of selling the property. In such cases, the Court may take into consideration such circumstances; and if it appear reasonable to make any special order, the Court may do so, and direct such property not to be sold; and if the debts of such person can be discharged by way of mortgage instead of sale, the Court may so order.

And where many persons, petitioning the Court, are possessed of lands, tenements, and hereditaments, for the term of their natural lives, with power of granting leases and taking fines, reserving small rents on such estate, for one, two, or three lives, in possession or reversion, or for some number of years determinable upon lives, or have powers over such real or personal estate which such persons could execute for their own advantage, and which said powers ought, on such persons petitioning, to be executed for the benefit of the creditors. In every such case, all the powers vested in any prisoner, (except the right of nomi-

nation to any vacant ecclesiastical benefice,) are vested in the assignees.

Where any such prisoner is entitled to a lease, or agreement for a lease, and his assignees accept the same, the prisoner is not liable to any subsequent rent or covenants; but the lessor, if the assignees decline to accept, may apply to the Court, praying that they may either accept, or deliver up such lease.

The assignees may, from time to time, sue for the recovery of any estate, effects, or rights, of such prisoner, and give discharge; make compositions with any debtors to such prisoner, and submit to arbitration any dispute, provided that no steps are made, nor any suit commenced, without the consent of the major part in value of the creditors.

Where creditors vote, every creditor shall be accounted such in respect of such amount only as may appear to be the balance due.

Suits are not to be abated by the death or removal of assignees, but to be prosecuted by the surviving or new assignee.

Where prisoners are beneficially entitled to stock in the public funds, the Court may order transfer thereof.

This act does not entitle the assignees of any prisoner, being a beneficed clergyman or curate, to the income of such benefice or curacy; but the assignees may apply for and obtain a sequestration of the profits of such benefice.

This Act does not entitle the assignees of any prisoner being or having been an officer of the army or navy, or an officer or clerk in the customs or excise, or in any civil office, or in the naval or military service of the East India Company, or an officer or clerk of the directors of the said Company, or in the enjoyment of any pension, under his Majesty's government, or the said court of directors, to the pay, half pay, salary, emoluments, or pensions of any such prisoner: but the said Court may order such portion of the pay, &c. on communication from the said Court to the chief officer of the department to which such prisoner may belong, as he or they may respectively consent to in writing, to be paid to such assignees.

If any person who petitions, at the time of arrest, has, by permission of the true owner, in his possession any goods or chattels, whereof such prisoner was reputed owner, or had taken the disposition of as owner, it is deemed the property of such prisoner: provided, that no transfer or assignment of any ship or vessel, or any share

thereof, made as a security for any debt or debts either by way of mortgage or assignment, shall be invalidated or affected by reason of such possession, order, or disposition of the same.

No distress for rent made after arrest upon the goods or effects of any such prisoner, is available for more than one year's rent; but the landlord may be a creditor for any overplus due.

If any prisoner, before or after his or her imprisonment, being in insolvent circumstances, voluntarily conveys or makes over any estate or effects to any creditor, or any person, for the advantage of any creditor, such conveyance, &c. is fraudulent and void: but no such conveyance, &c. is so deemed, unless made within three months before such imprisonment, or with the view or intention of petitioning the Court.

The provisions of the 3 Geo. IV. c. 39, *for preventing frauds upon creditors by secret warrants of attorney to confess judgment*, extend to the assignees of every prisoner who, after the expiration of twenty-one days after his execution of such warrant of attorney, or giving of such *cognovit actionem* as therein mentioned, applies by petition for his discharge.

Where any prisoner has executed any warrant of attorney to confess judgment, or given any *cognovit actionem*, no person shall, after the imprisonment of such prisoner, avail himself of any execution upon such warrant.

The assignees, at the end of three months, and so from time to time, must make up an account of the prisoner's estate, and make oath in writing that it is a fair and just account; and if it appear that the assignees have any balance wherewith a dividend may be made, they must proceed to make a dividend; notice of the time and place of dividend being published, as notice of meetings to approve the sale of real property, thirty days at least before such dividend is made; and if such dividend is made before adjudication, it must be made amongst those who prove their debts; and if such dividend is made after adjudication, it must be made amongst those whose debts are in the schedule, in proportion to the amount: but if any prisoner, creditor, or assignee, object to any debt, or if any person whose demand is stated in the schedule, but is not admitted, claim to be admitted, the objections and claims must be examined by the Court.

If any prisoner, creditor, or the Court, is dissatisfied with the account of an assignee, the Court may require

such assignee to render such account on oath, and to order a reference to an officer of the Court, or an examiner; and the Court, or such officer, may compel the production of books and writings necessary, and summon before them all parties; and the Court may take measures to compel the rendering of such account, and for the due investigation thereof, with power to disallow any charge, and award costs against any parties; and if it appear that any such assignee has wilfully retained, or employed for his own benefit, any part of the produce of such estate, the Court may order such assignee to be charged at the rate of £20 *per centum, per annum*.

The Court may take all necessary measures for compelling the due distribution of the prisoner's estate; and if it appear that any dividend has remained in the hands of any assignee for twelve calendar months following the declaring thereof, or for twelve calendar months following any order of the Court for the declaring or making thereof, the Court may order such unclaimed dividend to be immediately paid into Court; and in default, the Court may make such summary remedy, by distress and sale of the goods and chattels of such assignee; and if no sufficient distress can be found, to commit the offender to the King's Bench, or common gaol, without bail or mainprize.

The Court may remove assignees, and appoint new ones, in case of unwillingness to act, death, incapacity, disability, misconduct, &c.

If any assignee so removed, or the heirs, executors, or administrators of any deceased assignee, do not account for and deliver up all the estate and effects, or do not pay over the balance of the produce of any such estate or effects, the Court may commit persons so offending to the King's Bench, or common gaol.

Every prisoner applying for relief, within the space of fourteen days after his petition has been filed, or such further time as the Court think reasonable, must deliver into Court a SCHEDULE, containing a full and fair description of such prisoner, as to his or her name, trade, or profession, together with the last usual place of abode, and the place where he or she has resided during the time the debts were contracted; and also a full and true description of all debts due or growing due from such prisoner, and of every person to whom such prisoner shall be indebted, or who to his or her knowledge or belief shall claim to be creditors, together with the nature and amount

of such debts and claims, distinguishing such as are admitted from such as shall be disputed; and also a full, true, and perfect account of all the estate and effects of such prisoner, real and personal, in possession, reversion, remainder, or expectancy; and also of all places of benefit or advantage held by such prisoner; and also of all pensions and allowances, in possession or reversion; and also of all rights and powers of any nature and kind whatsoever, which such prisoner, or any other person in trust for his or her use, benefit, or advantage, are seised or possessed of; together with a full, true, and perfect account of all the debts due or growing due to such prisoner, or to any person in trust for him, or for his benefit, either solely or jointly with any other, and the names and places of abode of the several persons from whom such debts shall be due or growing due, and of the witnesses who can prove such debts; and the said schedule shall also contain a BALANCE SHEET of so much of the receipts and expenditures of such prisoner, and of the items composing the same, as shall be at any time required by the Court; and also fully and truly describe the wearing apparel, bedding, and other necessaries of such prisoner and his or her family, and the working tools and implements of such prisoner, not exceeding in the whole the value of *twenty pounds*, which may be excepted, together with the values of such excepted articles respectively.

The Court may appoint the time and place for hearing the petition, which time is not to exceed four calendar months after the date of such appointment. And the Court must cause notice of the filing of every such petition and schedule, and of the time and place so appointed, to be given to the creditors at whose suit any prisoner shall be detained in custody, or his attorney or agent, and to the other creditors named in the schedule, and resident within the United Kingdom, and whose debts shall amount to the sum of *five pounds*.

At such hearing, the Court must examine into the matters of the petition and schedule upon oath; and in case notice, as the Court shall direct, shall have been given by any creditor, of his or her intention to oppose such prisoner's discharge, he may put such questions, and examine such witnesses, as the Court think fit; and if the Court entertain any doubt, touching any matter alleged, or otherwise touching the schedule, or it appears that amendment is necessary, or if such prisoner shall refuse to be sworn, or does not answer upon oath to the satisfaction

of the Court, the hearing and examination may be adjourned.

Where the petition of any prisoner, whose usual place of abode was otherwise than in Middlesex, Surrey, London, or Southwark, is heard before the Court, the affidavits of any creditor or other person not resident within Middlesex, Surrey, London, or Southwark, may be received in opposition to the discharge of such prisoner, and interrogatories permitted to be filed for the examination or cross-examination of any person making or joining in such affidavits, and to adjourn the hearing and examination of such prisoner, until such interrogatories are fully answered; and where the hearing of the petition is before any commissioner on his circuit, or any justices at their sessions in Wales, or the town of Berwick-upon-Tweed, and the usual place of abode of such prisoner has been other than in the county or riding where such hearing may be, such commissioner or justices may receive the affidavits of any creditor or other person not resident within the county or riding where such hearing shall be, in opposition to the discharge, and permit interrogatories to be filed for the examination or cross-examination of any person making or joining in such affidavits, and to adjourn the hearing until such interrogatories are fully answered.

At such hearing, the Court may order a reference to an officer, or an examiner, to investigate the accounts, and to report thereon; and such officer may order the attendance of such prisoner as often as he thinks fit; and the keeper of the prison, carrying any prisoner before such officer, shall receive *ten shillings* from the person at whose requisition the reference is had; but no keeper is compelled to carry a prisoner more than two miles, except keepers in Middlesex and London, of the King's Bench and Marshalsea, and Horsemonger Lane, who must carry their prisoners to such place within the bills of mortality as the Court shall direct.

After this examination, the Court may adjudge the prisoner to be discharged as to the debts named in his schedule.

Where no cause appears to the contrary, the Court may adjudge the prisoner to be discharged forthwith, or so soon as he has been in custody for a period not exceeding *six months*, as the Court shall direct, from the filing of the petition.

If the prisoner has fraudulently destroyed, or withheld any books, or writings, relating to his affairs, or kept false

books, or fraudulently gives any undue preference, or discharged or concealed any debt, or made away with any part of his property, the Court may adjudge him to be discharged, so soon as he shall have been in custody for any period not exceeding *three years*.

If it appear that any prisoner has contracted any debts fraudulently, without reasonable expectation of paying the same, or fraudulently obtained forbearance of any debts, or put his creditors to any unnecessary expense, or is indebted for damages for criminal conversation, or seduction, or breach of promise of marriage, malicious prosecution, libel, or in any action for a malicious injury, or of tort or trespass, such prisoner may be discharged, excepting as to such debt, or damages, so soon as he has been in custody *two years*.

The discharge of a prisoner extends to processes from any Court, for nonpayment of money or of costs; and extends to all costs which such prisoner would be liable to pay in consequence of contempt, or on purging the same.

The discharge also extends to money payable by way of annuity or otherwise, at any future time or times; and persons who would be creditors for such sums, if presently due, are admissible as creditors for the value of such sums.

In all such cases, where any prisoner is discharged at a future period, the Court may direct him to be confined during any period within the walls.

Whenever any opposing creditor proves a prisoner has done any act for which he is liable to remain in custody three years, the taxed costs of such opposition will be paid to the opposing creditor; and in all other cases of opposition being substantiated, the Court may adjudge in like manner; but if the opposition was frivolous, the Court may award costs to the prisoner.

Where any adjudication is made, order must be made accordingly; and a warrant ordering the discharge of the prisoner from all detainers specified in the warrant, delivered to the gaoler.

Where a prisoner is liable to further imprisonment at the suit of his creditors, the Court, on the application of the prisoner, may order the creditors at whose suit he is imprisoned, to pay such prisoner a sum of money not exceeding *four shillings by the week;* and, on failure thereof, will order such prisoner to be forthwith discharged.

Before any adjudication is made, the Court requires prisoners to execute warrants of attorney to authorise the

entering up judgment for the amount of the debts in the schedule; and if at any time it appears that such prisoner is of ability to pay such debts, or any part, or that he is dead, leaving assets for that purpose, the Court may admit execution to be taken out upon such judgment; and such further proceedings may be had as seems fit to the discretion of the Court, until the whole of the debts are fully paid, with such costs as the Court awards; but if any such application appears ill-founded, the Court may refuse to make any order, but dismiss the same with costs.

If any person, after he has had the benefit of this Act, become entitled to any stock, bills of exchange, or other choses in action, which cannot be taken in execution under judgment, and refuses to convey the same, the assignees may apply to the Court, that he may be committed to custody; and if any persons become possessed of any property belonging to an insolvent, or indebted to such insolvent, the Court may cause notice to be given to retain it, till it make further order; and order such persons, &c. to deliver it over, and pay such debts to the assignees.

No person discharged under this Act is liable to imprisonment for debts, &c. to which such adjudication extends; and if arrested, will be released, unless it appears that such adjudication was made without due notice; and the judge may order costs to be paid to such person; and after any person is entitled to the benefit of this Act, no writ of *fieri facias* or *elegit* can issue on any judgment obtained against him for any debt, nor in any action upon any new contract, or security for payment of any such debt.

If, after adjudication, it appear that all the debts have been discharged, the warrant of attorney may be cancelled, or, if judgment is entered up, to enter satisfaction on such judgment: and if, after this, there remain in the possession of the assignee any property whatsoever, the Court may order the assignee to execute a conveyance to the person whose debts have been so discharged.

If it happen that a debt of, or claim upon, any prisoner, is specified in his schedule at not exactly the actual amount, without any culpable intention, the prisoner is entitled to the benefit of the Act, and the creditor is entitled to the benefit of the provisions made for creditors, in respect of the actual amount.

No person petitioning the Court, who has been at any time discharged by virtue of this, or any other Act for the relief of insolvent debtors, or who has been declared bankrupt before the commencement of his imprisonment, under

any commission remaining in force, and has not obtained his certificate, is entitled to the benefit of this Act within five years after such discharge or declaration of bankruptcy, unless three-fourths in number and value of the creditors signify their assent, or it appears that such person has endeavoured by industry and frugality to pay all just demands, and that the debts subsequent to his discharge, &c. have been necessarily incurred for the maintenance of his family, or that the insolvency has arisen from misfortune.

The Court, at the request of any creditors, may remove prisoners from London, Middlesex, or Surrey, if their usual place of residence be elsewhere, to be heard in the county to which they are removed.

The benefit of this Act is not extended to prisoners, who having been arrested in any place of their usual abode, except in Middlesex, Surrey, the city of London, or borough of Southwark, (such place of abode being more than twenty miles from the Court house of the said Court,) are removed by *habeas corpus* from such place to any other custody: but the Court, if it think fit, within ten days after filing the petition, or such further time as it may allow, on the request of any such prisoner, may order him to be taken to the gaol of the place where such prisoner was arrested.

Every adjudication is final and conclusive, unless there is cause to believe such adjudication was fraudulently obtained; in which case the Court may order the matter to be re-heard, and annul the original adjudication, and remand the prisoner; and where in any such case a prisoner refuses to appear, the Court may order him to be apprehended and committed to custody for examination; but where it appears such prisoner is not entitled to the benefit of this Act until a future period, the Court may adjudge the discharge at such future period, calculated without including the time he has been out of custody.

Where any discharge has been issued by mistake, the Court may revoke and amend the order.

The assignees of the estate of any person whose discharge has been adjudicated, may apply that such person may be further examined as to any effects.

If any prisoner shall fraudulently omit any property whatsoever, as wearing apparel, bedding, working tools and implements, or other necessaries, of greater value than twenty pounds, he, and any person assisting him, are guilty of a misdemeanor, and may be imprisoned and kept to hard labour for three years.

Persons guilty of perjury are liable to the same punishment as in other cases of wilful and corrupt perjury.

If a married woman petition, the Court may receive such petition without requiring her to execute a conveyance, assignment, or warrant; but it will require her to execute a conveyance and assignment to the assignee of all property real and personal, to which she is entitled for her separate use, or over which she has any power of disposition, or is vested in any trustee for her benefit, and to deliver up all personal effects of which she has the actual possession, except wearing apparel, bedding, and necessaries, not exceeding in value twenty pounds, and all other real and personal estates to which she may be entitled in any manner; and such married woman must execute a warrant of attorney for the amount of the debts remaining unpaid from which she may be so discharged; but such judgment does not affect the rights of her husband, except that the same shall be deemed and taken to be her debt, in case she die in the life-time of such husband; and if such woman, during the life-time of her husband, become entitled to any property for her separate use, such judgment may be enforced; and if such woman survive her husband, judgment may be after his death enforced against her: but the discharge of any married woman does not discharge her husband from any debt in respect of which his wife shall be so discharged.

This Act does not extend to discharge any prisoner from any debt due to his Majesty, or any penalty at the suit of the Crown, unless three Commissioners of the Treasury certify under their hands their consent to such discharge.

Any person imprisoned under a writ of capias or extent, at the instance of any surety, or other person, who may have paid the debt to the crown, may apply to the Barons of the Exchequer, giving one month's notice in writing to the parties, and an enumeration and description of all the effects of such person: and the Court may order such person to be brought before them, to be examined touching his property; and if such person shall make a full disclosure, and it appear to such Court reasonable that such person should be no longer imprisoned, it may order a writ of *supersedeas quoad corpus* for his liberation: but no such liberation can satisfy or supersede such extent, or any proceedings thereon, except as to such imprisonment, or the debt or debts seized under and by virtue thereof, and for which such person is so imprisoned.

The officer of the Court is to produce schedules and proceedings when required, to the prisoner or his creditors, which documents are admitted in all Courts as legal evidence.

When an order has issued for hearing the matter of the petition and schedule of any prisoner, at any place other than in Middlesex, Surrey, London, and Southwark, the prisoner must, within ten days, cause the duplicate of such petition and schedule, and all books, papers, and writings, relating thereto, to be lodged with the clerk of the peace; who must, on the request of such prisoner, or of any creditor, or of his attorney, produce and shew such petition and schedule, and such books, papers, and writings, and permit him or them to inspect and examine the same, and receive the fee of *one shilling* each time: and provide a copy of such petition and schedule, or such part as may be required, for which he is entitled to receive *fourpence for every sheet* containing seventy-two words. And every such duplicate, and all the books, papers, and writings, must be brought to the place of hearing, and produced by the said clerk of the peace, or his deputy; and where any such county is within the circuit of one of the said commissioners, such clerk of the peace, or his deputy, must act as clerk to such commissioner, and receive from every prisoner the sum of *five shillings*.

Justices may compel the attendance of witnesses: and the clerk of the peace may issue subpœnas, in each of which the names of four persons may be inserted, and he receives for such subpœna the sum of 2*s.* 6*d.*

Keepers of prisons in London and Middlesex, and of the King's Bench, Marshalsea, Horsemonger Lane, and borough of Southwark, are entitled to *three shillings* from every prisoner, for carrying him before the Court; and keepers of prisons are entitled to *one shilling and sixpence* from every prisoner for carrying him before a commissioner of the Court on his circuit, or before the justices at their sessions; and the expense of conveying any prisoner to any assize or other town, in every case where the gaol shall not be situate within such assize or other town, not exceeding *one shilling a mile*, must be paid out of the estate of such prisoner, if the same shall be sufficient, and if not, by the treasurer of the county, &c.

Sheriffs and all other persons are indemnified for obeying the orders of the Court.

In all rules, orders, warrants, and other proceedings of

the Court, or of any commissioner thereof, it is sufficient to set forth such rule, &c. without setting forth the petition, &c. or any part of the proceedings.

All affidavits may be sworn before the Court, any commissioner thereof, or any commissioner appointed for the purpose of taking affidavits, or any master extraordinary in Chancery, or commissioner for taking affidavits in any of the superior Courts of Westminster, or in Scotland or Ireland before a magistrate of the county, city, town, or place where any such affidavit shall be sworn.

Costs may be recovered as costs awarded by a rule of any of the superior courts at Westminster.

The Court may admit attorneys to practise therein: and persons not duly appointed are guilty of contempt of Court, and are subject to punishment by fine and imprisonment.

The sum of three shillings only is to be paid for the insertion of any advertisement.

No conveyance, assignment, letter of attorney, affidavit, certificate, proceeding, instrument, or writing whatsoever, nor any copy thereof, nor any advertisement inserted in any newspaper, relating to matters within the jurisdiction of the Court, is liable to any stamp duty; and sales of any real or personal estate of any prisoner are not liable to auction duty.

The Court may invest unclaimed money, and apply the profits towards the expenses of the Court.

PRACTICAL PROCEEDINGS IN TAKING THE BENEFIT OF THE INSOLVENT ACT.

The first step to be taken by an insolvent, after having been in custody the requisite period of twenty-one days, is to give the keeper of the prison in which he is confined a notice to the following effect.

To the Keeper or Gaoler of his Majesty's Prison of ———

Take Notice, that I late of in the county of now in your custody at the suit of do forthwith intend to present a petition to the Court for Relief of Insolvent Debtors pursuant to the Act of Parliament

passed in the seventh year of the reign of his Majesty King George the Fourth, intituled, "An Act to amend and consolidate the Laws for the Relief of Insolvent Debtors in England," praying to be discharged from custody, and to have future liberty of my person against the demands of the said and against the demands of all other persons who shall be or claim to be my creditors at the time of presenting such petition. Dated this day of 18

Witness,

The next step is to employ one of the attorneys of the Insolvent Court, of which there are a limited number authorised to practise, and make the best arrangement with regard to terms that can be effected. In some cases, the business will be undertaken for as little as five guineas; but, whatever be the sum agreed upon, be sure to have it settled before any thing is done. When you have arranged with your attorney, you must sign him an authority to act for you, in the following form :—

The Court for Relief of Insolvent Debtors.

I do hereby retain to act for me as my attorney in the said Court, and I do hereby declare that he is employed by me at my own request. Dated the day of 18

I, hereby accept the above Retainer, which was signed by the said prisoner in my presence.

The attorney will then prepare the Petition, which is done according to the following form :—

To the Court for Relief of Insolvent Debtors.

THE HUMBLE PETITION OF

Sheweth,

If the prisoner was bailed, or first committed to another Prison, and removed by Habeas Corpus or otherwise, the fact must be here stated.

THAT your Petitioner is now a prisoner for debt in in the of and is there detained at the suit of for the sum of and that your petitioner was first arrested in the said suit at in the county of

on the day of
One Thousand Eight Hundred and
Thirty . and was
committed to the said .
on the day of
One Thousand Eight Hundred
and Thirty .
.

If more than one detainer, make statement as to each according to the fact.

and that your Petitioner did petition Court for h discharge under Act for the Relief of Insolvent Debtors

Under the several heads let the blanks be filled up negatively or affirmatively, according to the fact; if affirmatively, with dates, and stating whether Petitioner obtained his discharge or certificate, as the case may be.

and that your Petitioner did petition Court for h discharge under the Act commonly called the Lord's Act
and that your Petitioner was declared a Bankrupt . and that your Petitioner has given notice in writing to the keeper of the said of of h intention to present this Petition. Your Petitioner therefore humbly prays your honourable Court that he may be discharged from custody, and have future liberty of person against the demands for which he is now in custody, and against the demands of all other persons who are or claim to be creditors of your Petitioner, according to the provisions of the statute in that behalf.

And your Petitioner shall ever pray, &c.

Subscribed by the said Prisoner, on the
day of 18
in the presence of

This Petition must be indorsed as follows:—

No.

First Arrest	**day of**	**18**
Commitment	**day of**	**18**
Petn. dated	**day of**	**18**
—— filed	**day of**	**18**

The Petition of

Prison.

This Petition must be forwarded to the Court, accompanied with the Schedule of all the real and personal estate of the insolvent, which must be made out pursuant to the following form and directions.

In the Court for Relief of Insolvent Debtors.

The Schedule of

I the said do declare, That this my Schedule doth contain a full and fair description of me, as to my name or names, trade or trades, profession or professions, together with my last usual place of abode, and the place or places where I have resided during the time when my debts were contracted, and also a full and true description of all debts due or growing due from me at the time of filing my Petition, and of all and every person and persons to whom I am indebted, or who to my knowledge or belief claim to be my creditors, together with the nature and amount of such debts and claims respectively, distinguishing such as are admitted from such as are disputed by me, and also a full, true, and perfect account of all my estate and effects, real and personal, in possession, reversion, remainder, or expectancy, and also of all places of benefit or advantage held by me, whether the emoluments of the same arise from fixed salaries, or from fees or otherwise, and also of all pensions or allowances which I have in possession or reversion, or which are held by any other person or persons for me or on my behalf, or of and from which I derive or may derive any manner of benefit or advantage, and also of all rights and powers of any nature and kind whatsoever, which I am, or any other person or persons in trust for me or for my use, benefit, or advantage, are, in any manner whatsoever, seised or possessed of, or interested in or entitled unto, or which I or any other person or persons in trust for me, or for my benefit, have any power to dispose of, charge, or exercise for my benefit or advantage, together with a full, true, and perfect account of all the debts due or growing due at the time of filing my Petition to me, or to any person or persons in trust for me, or for my benefit or advantage, either solely or jointly with any other person or persons, and the names and places of abode of the several persons from whom such debts are due or growing due, and of the witnesses who can prove such debts, so far as I can set forth the same; and that this my Schedule doth also contain a Balance Sheet of so much of my receipts and

expenditures, and of the items composing the same, as is required by this honourable Court in that behalf; and doth fully and truly describe the wearing apparel, bedding, and other such necessaries of myself and my family, and my working tools and implements, which are excepted by me from the operation of the Act of Parliament of the 7th Geo. 4. c. 57. together with the values of such excepted articles respectively.

Excepted Articles, and the Values thereof.	£.	s.	d.
£			

WITNESS my hand, the day of One Thousand Eight Hundred and Thirty Three.

Signed in the presence of

Schedule. Page 2.

Balance Sheet of Receipts and Expenditures.

THE COURT REQUIRES

That this Account shall in no case begin later than Four Calendar Months before the Prisoner's last Commitment to Custody:

That, if he was before that time arrested in any Suit which is still continued, it shall begin not later than the Time of such Arrest.

That, if before those Periods, but since the Commencement of his present Embarrassments, any Property has gone away from him by Sale, Assignment, Mortgage, Distress, Execution, or any Means other than the ordinary Course of Trade, the Account shall commence so as to include all such Transactions:

† **That the Blanks in the Description of the Debtor side of the Account shall be filled with a Date early enough for compliance with the above Directions:**

That the specific Appropriation of each Sum received shall be separately shewn, where the Case admits of it:

That the Date of each Item in the Account shall be given by stating the Day as well as the Year, where the same can be ascertained.

That Money and other Property, which was in Possession of the Prisoner or his Family, or of any other Person for his or their Benefit, at the time when he was last taken into Custody, shall in all Cases be made a specific Item or Items in the Account.

Dr.				*Cr.*			
† Specification of all Property, Real and Personal, in which I have had an Interest at any time since the day of 183 to the time of subscribing this my Schedule, shewing WHEN, HOW, to WHOM, and for WHAT Consideration any Portion of such Property has been parted with:				Account of all such Property, shewing what Part thereof is now available for the benefit of my Creditors, and, as to such Part as has been parted with, the particular Application of the Proceeds of the same.			
DATE.	£.	s.	d.	DATE.	£.	s.	d.

Schedule. Page 3.

Creditors.

N.B. Where there are Cross Demands the party must be entered both as Creditor and Debtor, and "set-off" must be written under the Amount.

No.	Names and Description of Creditors and Claimants, and their present or last Residence.	Amount. £. s. d.			When contracted.	Admitted or Disputed.	Nature and consideration of the Debt, and Securities, if any; also if the Debt is disputed, the reason thereof.

Schedule. Page 4.

Creditors continued.

No.	Names and Description of Creditors and Claimants, and their present or last Residence.	Amount. £. s. d.			When contracted.	Admitted or Disputed.	Nature and consideration of the Debt, and Securities, if any; also if the Debt is disputed, the reason thereof.

Schedule. Page 5.

Debtors.

N.B. Where there are Cross Demands, the party must be entered both as Creditor and Debtor, and "set off" must be written under the Amount.

No.	Names, Descriptions, & Places of Abode of Debtors.	Amount. £. s. d	When contracted.	Good, bad, or doubtful.	Nature & consideration of the Debt; also Securities, if any, for the same.	Witnesses with their Residences, and other evidence, by which the Debt may be proved.

Schedule. Page 6.

N.B. If Property has been taken Possession of by the Provisional Assignee, it must nevertheless be fully entered in the Schedule.

Property in Possession.

Real and Personal Estates and Effects, which were in my Possession, Enjoyment, or Control, or which were held by any other Person or Persons in Trust for my Use, or to the Possession or Enjoyment of which I was entitled at the Time of subscribing my Petition, and which are not excepted from the Operation of this Act.

Where under any division the Prisoner has no property, the word "None" to be entered.

		Supposed value. £.	s.	d.
1. Interests in Land.	*Freehold, Copyhold, and Leasehold Property, with local Description, Names of Tenants, and Annual Rent of the same; and Statement of Incumbrances (if any) thereupon, with the dates thereof.*			
2. Personal Property.	Household Goods and Furniture . . . . . . at			
	Wearing Apparel			
	Jewels, Trinkets, and Ornaments of the Person			
	Plate, Linen, and China			
	Wines, and other Liquors			
	Books, Prints, and Pictures			
	Horses, Cows, and other Animals			
	Carriages			
	Farming Stock and Implements of Husbandry			
	Stock in Trade in my Business of			
	Machinery and Utensils in my Business of			
	Ships, and Shares of Ships, viz.			
	Cash, Bills, Promissory Notes, and other Personal Property, not before specified.			
3. Property in the Funds, Annuities, Shares, &c.	*Annuities, Money in the Public or other Funds, Shares in Canal and other Companies; shewing in whose names the same are standing, also when and by whom the last Dividend or other payment was received in respect of the same.*			
4. Unpaid Legacies.	*Legacies due, but unpaid; with all particulars concerning the same.*			

BOOKS, DEEDS, PAPERS, &c.	**The following is a true List of all Books, Papers, Deeds, and Writings, relating to my Estate and Effects, or any part thereof, which at the Time of my first Arrest abovementioned were, or at any Time since have been in my possession, or under my Custody or Control, or in the Possession or Custody of any Person in Trust for me, or for my Use, Benefit, or Advantage.**

(Signed)

Schedule. Page 7.

Property in Reversion, &c.—Places.—Pensions.—Rights and Powers.

N.B. Contingent as well as Vested Interests must be entered.

Real and Personal Estates and Effects, in which I have any Interest in Reversion, Remainder, or Expectancy.

		Supposed value of my interest if now to be sold £.	s.	d.
1. Interests in Land.	*Freehold, Copyhold, and Leasehold Property, with Names and Descriptions of Persons now enjoying the same, and the Annual Value thereof; also the Nature of my Interest therein, and from Whom and in what Manner it is derived.*			
2. Personal Property.	*Personal Property, with Names and Descriptions of Persons now enjoying the same; also the Nature of my Interest therein, and from Whom, and in what Manner it is derived.*			
3. Property in the Funds, Annuities, Shares &c.	*Annuities, Money in the Public or other Funds, Shares in Canal and other Companies; shewing in whose Names the same are standing, with Names and Descriptions of Persons now enjoying the same; also the Nature of my Interest therein, and from Whom and in what Manner it is derived.*			
Places and Pensions in possession or reversion.	*Places of Benefit or Advantage held by me, with the Salaries, Fees, and Emoluments thereof: also all Pensions and Allowances, in possession or reversion, held by me, or by any other person or persons for me or on my behalf, or of and from which I derive or may derive any benefit or advantage.*			
Rights and Powers.	*Rights and Powers which I, or any other person or persons in trust for me, or for my use, benefit, or advantage, am or are in any manner seised or possessed of, or interested in, or entitled unto, or which I, or any other person or persons in trust for me, or for my benefit, have any power to dispose of, charge, or exercise for my benefit or advantage.*			

I,

do hereby swear that the contents of my Petition filed in this honourable Court, and also of this my Schedule, and of all and every part thereof respectively, are true:—So help me, God.

Sworn in Court, at

This Schedule must be indorsed as follows:—

No.

SCHEDULE

of

Prison.

Arrested	day of	18
Committed	day of	18
Petition signed	day of	18
Ditto filed	day of	18
Schedule signed	day of	18
Ditto filed	day of	18
To be heard	day of	18

Debts, £
Credits, £
Books
Papers
Deeds
&c.

With this Schedule a general Balance Sheet must be prepared and forwarded to the Court, exhibiting at one view an abstract of the total amounts of the respective items, and great care must be taken that all the different documents accurately correspond;—a caution the more necessary to be observed, because accounts are often furnished by persons not accustomed to figures; and, without any intention to defraud, the most mischievous, and sometimes ludicrous variations are made to appear. Let every account, therefore, be carefully examined, and compared with one another, to prevent mistakes, which may be of serious consequence. The following is the form of the balance sheet:—

In the Court for Relief of Insolvent Debtors.

In the matter of the Petition of
a prisoner in

General Balance Sheet.

This my Account begins in or about † the month of 183
The earliest Debt in my Schedule (No.) was contracted by me in the year 183

DATES.	Dr.	£.	s.	d.	DATES.	Cr.	£.	s.
	Capital at the time aforesaid†, consisting of					Good Debts as in Schedule .... Bad .... Doubtful		
	Aggregate amount of Debts, as in Schedule					Amount of Debts owing to me...............		
	Deduct 1. Those for which I have received no consideration....					Rent for years, at £ a year....		
	Deduct 2. In respect of Debts more than once entered......					Taxes for years, at £ a year		
						Servants' Wages for years, at £ a year		
	Amount of Debts contracted since the time aforesaid†, for which I have received consideration :					Other Household Expenses for years, at £ a year		
	Profits of Business in each year, viz.					Special Expenses, Disbursements, and Losses, viz		
	[Here enter all monies received by Annuities, Dividends, or otherwise, also all property had by purchase, gift, devise, bequest, &c. since the time aforesaid†:—					Property mentioned in Schedule, p. 6 and 7 :		
						Money in possession when I was taken into custody:		
						Excepted articles, as by valuation		
						Difference between valuation and cost price....		
						Deficiency.............		
	Value to be accounted for					£		

Cause of my Insolvency.

Signed in the presence of } Dated this day of 183

When these documents are properly filled up, and filed in the Court, an order for the hearing, and appointment of a day for that purpose will be issued, in the form below.

Pursuant to the Act for the Relief of Insolvent Debtors in England.

The Court for Relief of Insolvent Debtors.

On the day of 183

Upon the filing of the Petition and Schedule of
a prisoner in
in the county of
IT IS ORDERED AND APPOINTED that the matters of the said Petition and Schedule shall be heard by the Court, at the Court House, in Portugal-street, Lincoln's-inn-fields, on the day of next, at the hour of TEN in the morning precisely: of which all Creditors and persons claiming to be creditors of the said Insolvent for the sum of five pounds or more, shall have notice, by service of a copy of this order, made within such time and in such manner as is prescribed by the rule of Court in that behalf. By the Court.

TAKE NOTICE.

1. *If any Creditor intends to OPPOSE the said Prisoner's discharge, NOTICE of such intention must be given by ENTRY thereof in the proper page and column of the BOOK kept for that purpose at the Office of the Court, between the hours of TEN in the forenoon and FOUR in the afternoon, three CLEAR days before the day of hearing abovementioned, EXCLUSIVE of Sunday, and EXCLUSIVE both of the day of entering such notice and of the said day of hearing:—Notice to PRODUCE at the hearing any BOOKS or PAPERS filed with the Schedule must be given to the Officer having the custody thereof, within the same hours on any day previous to the said day of hearing.*

N.B. Entrance to the Office in Portugal-street.

2. *The Petition and Schedule, and all Books, Papers, and Writings filed therewith, will be produced by the proper Officer for INSPECTION and EXAMINATION on Mondays, Wednesdays, and Fridays, until the last day for entering opposition inclusive, on this Notice being exhibited:—and COPIES of the Petition and Schedule, or such part thereof as shall be required, will be provided by the proper Officer, according to the Act 7 Geo. 4. c. 57. sec. 76.*

3. *Opposition at the hearing can only be made by the Creditor in person, or by Counsel appearing for him.*

And when this is done, the insolvent must cause every creditor to be served with notice of the day appointed for hearing the petition, which is headed as follows:—

Pursuant to the Act for the Relief of Insolvent Debtors in England.

Office of the Court for Relief of Insolvent Debtors, No. 33, Lincoln's-inn-fields, London.

Petition of Insolvent Debtor to be heard at the Court House, in Portugal-street, Lincoln's-inn-fields, on the day of 183 at nine o'clock in the forenoon.

This notice must have at the bottom the same *three cautions* as are at the bottom of the previous order for hearing the petition, *as printed in italic* in page 346; and care must be taken to serve the notices in sufficient time to leave the *three clear* days, exclusive of Sunday, the day of entering the notice, and the day of hearing the petition.

These notices being served, the insolvent must prepare a statement of the service, in the following manner.

Petition Insolv[t] Prison Att[y]		Return.		
No.	Notices addressed severally as follows.	Messr.	Manner of service	Day.

N.B. Let an ample blank line be left after each entry, for the case of a special return being necessary, such as correction of name, address, &c.

Indorse this statement as follows, and file it in Court.

Town (or Country.)

Original (or adjourned.)

No.
Insolv^{t}.
Prison
To be heard on
the day of 18
Delivered to Messengers, on
the day of
18
Att^{y}.
Agent

Every thing is now ready for the hearing; and, supposing all correct, and no opposition be made, the case will proceed, and the insolvent obtain his discharge, after being sworn to the truth of the various documents he has delivered in.

Where the insolvent has any property in his possession, or under his control, he must also deliver an account in the following form, that they may be delivered up to the provisional assignee.

The Court for Relief of Insolvent Debtors.

An Account of the real and personal estate and effects of
now in h possession, or under h control, and to be given up to the Provisional Assignee.

[Over and above the articles intended to be excepted by me in my Schedule, not exceeding the value of twenty pounds.]

Dated this day of 18

Signed in the presence of }

Where there is any opposition, of course more expense will be entailed; though, where the opposition is vindictive or unreasonable, and the insolvent can depend upon the accuracy of his accounts, it may not be worth the expense of employing counsel, as the Court construes every thing very liberally in favour of the insolvent, and will

not remand without well-substantiated reason. But in very complicated accounts, the assistance of counsel may be essential, to take care that the Court is not misled by the counsel on behalf of a creditor, who may be instructed to take every advantage, in the hope of procuring an undue preference for his client.

THE LORDS' ACT.

There is another mode of relief under *insolvency*, supplied by the statute of 48 Geo. III. cap. 123, which, by section 1, provides that *all persons* in execution upon any judgment, in whatsoever Court the same may have been obtained, for any debt or damages not exceeding the sum of £20 exclusive of costs, and who shall have lain in prison for the space of twelve successive calendar months, next before the time of their application, shall, upon application for that purpose in term time, made to some one of his Majesty's Courts at Westminster, to the satisfaction of such Court, be forthwith discharged out of custody as to such execution, by the rule or order of such Court.

As we have given, under a separate head, the theory and practice of the general Insolvent Act, the Insolvent Act to be treated of here, is the one usually termed the "*Lords' Act*."

By the *Lords' Act*, any prisoner in execution for a sum not exceeding *three hundred pounds*, being desirous of giving up his estate and effects in satisfaction of his debts, may, *before the end of the term next after he is charged in execution*, exhibit a petition to the Court whence the process issued, upon which he was taken or charged in execution, or to the Court into which he shall be removed by *habeas corpus*, or charged in custody, stating the cause of his imprisonment, and setting forth a true account of all the real and personal estate which he, or any person in trust for him, was entitled to at the time of his petition-

ing, and also at the time of his first imprisonment, and of all incumbrances and charges, if any, affecting the same; and likewise a just and true account of all securities, deeds, evidences, writings, &c. concerning the same, and the names and places of abode of the witnesses to such deeds, &c.

If a defendant omit to take the benefit of the Act within the time above limited, and shall make it appear to the Court that his neglect arose from *ignorance* or *mistake*, he may be allowed the benefit in the same manner as if he had applied in due time, by 26 Geo. III. c. 44, sec. 5; and this statute has been held to extend to cases where a defendant has omitted to take the benefit, through the misconduct of his agent, or to his ignorance of the plaintiff's place of abode.

Persons committed on attachments for non-payment of money *awarded by arbitrators*, or for *non-payment of costs*, and persons committed for costs in the Ecclesiastical Courts, are within the meaning of the Lords' Act; but defendants in *qui tam* actions, crown debtors, and persons who have before taken the benefit of other Insolvent Acts, are not entitled to the benefit of this Act.

In order to take the benefit under this Act, get a copy of causes from the clerk of the papers of the prison, or gaoler; and if the prisoner be not in the King's Bench prison, there must be an affidavit of having seen the gaoler sign the certificate. Then write out a schedule of all the real and personal estate, debts, &c. of the prisoner; and this schedule must include every thing that the prisoner could sell for his own benefit; but not property which is not legally the subject of sale, such as the half-pay of an officer, or offices which are not assignable. Then write out the petition of the prisoner. Next write out a notice to each of the creditors at whose suit the defendant is in execution, stating the defendant's intention to petition; and, at the foot of it, write a copy of the schedule abovementioned. This notice and schedule must be signed by the prisoner, in the presence of a witness, who must make affidavit thereof. Fourteen days, *at least*, before the petition is to be exhibited, one of these notices must be served on each and every creditor at whose suit the prisoner is in execution, or upon their executors or administrators, or left for them at their usual place of abode; or, in case any creditor cannot be met with, then, and *not otherwise*, the notice may be given to, or left for, his at-

torney or agent last employed in the action. Then make an affidavit of the service, and annex it, with the affidavit as to the signature, to a copy of the notice.*

Annex the copy of causes, and the affidavit of the gaoler's signature, when necessary, to your petition, and also the schedule, and the notice and affidavits above mentioned. Take these to the clerk of the rules, who will draw up a rule directing the prisoner to be brought up, and the creditors to appear, on a day therein mentioned; pay the clerk 2s. 6d. and serve a *copy* of the rule upon each of the creditors, and upon the marshal or gaoler; make an affidavit of the service of this copy, and annex it to the *original rule*.

If the prisoner is in custody above twenty miles from Westminster Hall, he is to be brought up to *the assizes;* and, in that case, copies of the rule must be served at least fourteen days before the commission day. If the prisoner is to be brought up to the King's Bench, it must be on some Monday or Thursday during term; if at the assizes, he is usually brought up on the last day. In the King's Bench, the clerk of the rules brings the petition and affidavits into Court; but, at the assizes, you must apply previously to the clerk of the rules for the petition, &c. who will give them to you, upon your furnishing him with copies, and deliver them to the clerk of assize, or other officer of the Court. The petition and affidavits are then read; the Court proceeds to examine into the matter of the petition in a summary way, and to hear what is alleged for and against the discharge of the insolvent; and if the Court judge that the insolvent is entitled to the benefit of the Act, they will order him to be discharged, after he has been sworn to the truth of his schedule, upon his executing an assignment of his effects, which is done by a short indorsement on the back of his petition, unless some creditor object to his discharge, as after mentioned.

All objections to the schedule, for insufficiency in point of form, must be made when the insolvent is brought up this *first time;* for, if he be remanded, and brought up a

* Blank forms of these notices, petitions, schedules, and affidavits, may be had at the office of the clerk of the rules; and the affidavit may be sworn in town before a judge, and before a commissioner in the country.

second time, the creditor is allowed to object to the schedule in point of *substance* only.

If any creditor be not satisfied of the truth of the insolvent's oath, and shall, either personally, or (upon proof that he cannot personally attend) by his attorney, desire further time to inform himself concerning it, the Court may remand the prisoner, and order him again to be brought up some day within the first week of the next following term, or sooner, if the Court shall think fit. And if at such second day, such creditor do not appear, either personally or by his attorney; or if he appear, and is unable to discover any effects omitted, the Court will discharge the insolvent, unless the creditor insist on his being detained, and agree, in writing, to pay him 3*s.* 6*d.* per week; or, if more than one creditor, 2*s.* per week each, as long as the defendant shall remain in execution at their suit; in which case the prisoner must be remanded to prison, and remain in execution.

This agreement in writing is a kind of promissory note, and the weekly sum must be made payable every *Monday*, or the note will be void. It must be made for the payment of 3*s.* 6*d.* per week, unless there be two or more actions at the suit of different plaintiffs, who desire to detain the insolvent; in which case there must be two notes for the weekly sum of 2*s.* each. But if one plaintiff, or one set of plaintiffs, have a defendant in execution in two or more actions, one note for 3*s.* 6*d.* per week is sufficient. The note must be signed by the plaintiff, if he is in England; but if not in England, it may be signed by his attorney. It must be delivered to the insolvent in *open court*, and before the crier has made the third proclamation, or the insolvent is not bound to receive it. It must be tendered by the attorney, if signed by him; and if signed by the creditor, it must be tendered by him in person, or, if he cannot attend, then by his attorney, the attorney making affidavit of the creditor's having signed, and that he witnessed it, and the affidavit must be *correctly intituled* in the cause.

The Court will *not* order an insolvent to be brought up a *third* time, either upon his own application, or at the request of any creditor; and if the Court refuse to discharge a prisoner, he can never afterwards be brought up again to obtain the benefit of the Act, even though his creditors should desire it.

A creditor may, at any time before the prisoner has

'taken the benefit of the Act, file interrogatories for his examination with the clerk of the rules, who will thereupon draw up a rule for his examination upon them, and deliver them to the master, who will swear him in Court, and proceed to the examination, which must be signed by the insolvent, and delivered, with the interrogatories, to the clerk of the rules, who will read them in Court, when the insolvent is brought up to be discharged.

The weekly sum must be paid regularly *every Monday, before the gates of the prison are finally closed for the night.* When it was given to the turnkey of the *felon's side* of the prison, after ten o'clock at night, the Court held that it was not sufficient; first, because it was paid after the gates were closed for the night; and, secondly, because it should have been paid to the turnkey at the *debtor's side* of the prison, as a payment to the turnkey of the felon's side was no payment to a debtor. The money is always, however, delivered to the turnkey. Where a *French half crown* formed part of the money paid, the Court in one case held it to be a good payment, because the turnkey made no objection to it at the time he received it; but in a more recent case, where a *French sixpence* was given in part of the *3s. 6d.* the Court of Common Pleas discharged the defendant.

If any default be made in payment, the prisoner, upon application to the Court in term time, or to a judge in vacation, may, by order of the Court or judge, be discharged out of custody, upon executing an assignment of his estate and effects.

Under the *compulsive clause* of the Lords' Act, if a person committed or charged in execution, for a sum not exceeding £300, exclusive of costs, does not within three months make satisfaction for the same, any of his creditors, by twenty days' notice in writing, may require him to give a true account, in writing, of his estate, &c. And if a prisoner be in execution under any process from one of the Courts at Westminster, or be removed by *habeas corpus* to, or charged in execution in, the prison of such Court, the creditor may require the prisoner to give in an account, &c. to such Court, within the first seven days of the term next after the expiration of the twenty days' notice; or, if the prisoner be charged in execution in a prison belonging to any other Court of Record, then to such Court, at the *second* Court to be held after the expiration of the said twenty days; or, if the prisoner be in execution in any county or other gaol, more than twenty

miles distant from Westminster Hall, or the Court out of which the process issued, then he is to give in the account aforesaid upon oath, at the assizes, or great sessions of the county to which the prison belongs, which shall be held next after the expiration of the twenty days' notice; and the notice, of course, must be framed accordingly.

The creditor must next give a similar twenty days' notice to the other creditors at whose suit the prisoner is "detained or charged in custody;" and this notice must be given to the creditors themselves, if they can be met with; or, if not, to the attorneys last employed by them in their actions against the prisoner.

The creditor must also give twenty days' notice to the sheriff or gaoler in whose custody the prisoner is detained, of his intention to have him brought up, and requiring the sheriff to bring him up accordingly, which the sheriff, &c. is bound to do, at the cost of the creditor, and produce a copy of the causes of his detainer. Previous to the prisoner being brought up, the creditor should prepare his petition, and have the affidavits of the delivery of the notices abovementioned.

The prisoner, when so brought up, must deliver an account, in open Court, of all his property, (except to the amount of £10. in wearing apparel, bedding, tools, &c.) and signed with his name. When this is done, and the prisoner has assigned his effects as before mentioned, to such person as the Court may direct, in trust for the petitioning creditor, and such other creditors as will, before the assignment, by a memorandum in writing, consent to the prisoner's being discharged out of custody, and agree to accept a proportionate dividend of the estate with the petitioning creditor, the prisoner shall be discharged as to all actions against him by the petitioning creditor, and such as sign the consent aforesaid. If any surplus remain of the prisoner's property, it must be paid over to him, or his executors, &c.

By a discharge under the Lords' Act, the debtor's person is for ever freed from any arrest for the same debt; and, even if he subsequently *promise payment*, he cannot be arrested, or held to bail on such promise. The judgment, however, remains in force; and execution may at any time be sued out against the debtor's "lands, tenements, rents, or hereditaments, goods, or chattels," except as to the £10. of property before mentioned.

LAW OF BILLS OF EXCHANGE AND PROMISSORY NOTES.

A BILL OF EXCHANGE is a negotiable security for money, well known among merchants. The laws relating to this subject, and that of promissory notes (*if negotiable*) being implicated together, we shall consider them under one head.

A bill of exchange is an open letter of request addressed by one person to a second, desiring him to pay a sum of money to a third, or to any other to whom that third person shall order it to be paid; or it may be made payable to bearer. The person who makes the bill is called the *drawer*; he to whom it is addressed, the *drawee*; and when he undertakes to pay the amount, which is done by his acceptance, he is called the *acceptor*. The person to whom it is ordered to be paid is called the *payee*; and, if he appoint another to receive the money, that other is called the *indorsee*, as the *payee* is with respect to the other the *indorser*. Any one who happens for the time to be in possession of the bill is called the *holder* of it.

The time at which the payment is limited to be made is various, according to the circumstances of the parties, and the distance of their respective residences. Sometimes the amount is made payable at *sight;* sometimes at so many days *after sight;* and, at other times, at a certain distance from the *date*. *Usance* is the time of one, two, or three months after the date of the bill, according to the customs of the places between which the exchanges run; and the nature of which must be shown, and averred in a declaration in an action upon such a bill. Double or treble usance, is double or treble the usual time; and half usance is half the time. Where the time of payment is limited by months, it must be computed by *calendar*, not *lunar* months; and where one month is longer than the succeeding one, it is a rule not to go in the computa-

tion into a third. Thus, on a bill dated on the 28th, 29th, 30th, or 31st of January, and payable one month after date, the time expires on the 28th of February in common years; and, in the three latter cases, in leap year, on the 29th, to which are added the three days of grace.

Where a bill is made payable at so many days after sight, or from the date, the day of presentment, or of the date, is excluded. Thus, where a bill, payable ten days after sight, is presented on the first day of a month, the ten days expire on the 11th; where it is dated the 1st, and made payable twenty days after date, then it expires on the 21st.

A custom has obtained amongst merchants, that a person to whom a bill is addressed, shall be allowed a few days for payment, beyond the term mentioned in the bill. These are called *days of grace*. In Great Britain and Ireland, *three* days are given; in some other places, more. If the last of these three days happen to be Sunday, the bill is to be paid on Saturday. These days of grace are allowed to promissory notes, but *not* to bills payable at sight.

Bills of exchange are distinguished by the appellation of *foreign* and *inland* bills; the first being those which pass from one country to another, and the latter such as pass between parties residing in the same country; and the law and custom of merchants with respect to the one, is now, in most respects, the established law of the country with respect to the other.

The following are the most general forms of inland and foreign bills of exchange.

£100. London, January 1, 1833.

One month [&c.] after date please to pay to A. B. or order [*or*, to me, or my order] the sum of one hundred pounds, and place the same to the account of T. T.

To Mr. C. D.

[Place of abode and business.]

Acc. C. D.

London, January 1, 1833.

Exchange for £50 sterling.

At sight [*or*, at sight of this my only bill of exchange] pay to Mr. A. B. or order, fifty pounds sterling, value received of him, and place the same to account, as per advice [*or*, without further advice] from O. S.

To Mr. C. D., &c.

London, January 1, 1833.
Exchange for 10,000 liv. Tournoises.

At fifteen days after date, [*or*, at one, two, &c. usances] pay this my first bill of exchange, [second and third of the same tenor not paid] to Messrs. A. B. & Co. or order, ten thousand livres Tournoises, value received of them, and place the same to account, as per advice from C. D.

To Mr. E. F.
Banker in Paris.

The two other bills of the foreign set are varied thus, "first and third," and "first and second not paid."

A promissory note is a less complicated kind of security, and may be defined to be an engagement in writing to pay a certain sum of money, mentioned in it, to a person named, or to his order, or to the bearer at large. At first, these notes were considered only as written evidence of a debt; but they are now recognised by the legislature, and put on the same footing as inland bills of exchange, by the 3d and 4th of Anne, cap. 9, made perpetual by the 7th Anne, cap. 25, s. 3, which enacts that promissory notes, payable to order or bearer, may be assigned and indorsed, and action maintained thereon, as on inland bills of exchange.

Form of Promissory Notes.

£20. London, January 1, 1833.
On demand [*or*, two months, &c. after date] I promise to pay A. B., or bearer, on demand, twenty pounds, value received. T. T.

£20. London, January 1, 1833.
Two months [&c.] after date, we and each of us promise to pay to Mr. C. B., or order, twenty pounds, value received. A. B.
C. D.

By statutes 15 Geo. III. c. 5, and 17 Geo. III. c. 30, made perpetual by 27 Geo. III. c. 16, all negotiable notes and bills for less than 20*s*. are declared void; and notes or bills between that sum and £5, must be made payable within twenty-one days after date; must particularise the names and descriptions of the payees; must bear date at the time and place they are made; must be attested by a subscribing witness; and the indorsement of them must be

attended with the same strictness in all respects, and must be made before the notes or bills become due.

If a bill, &c. after it has been drawn, accepted, or indorsed, be altered in any material respect, without the consent of the parties privy thereto, it will discharge them from all liability thereon, though the bill may afterwards come into the hands of an indorsee not aware of the alteration; and such alteration will have the same effect as to the drawer's liability on the original consideration. A material alteration, even by a stranger, will equally vitiate a bill. But a mere correction of a mistake, as by inserting the words "or order," in furtherance of the original intention of the parties, will not vitiate the bill, if made before the bill was circulated. And if the alteration be not in the time of payment, &c. or other *material* part, the bill will not be affected by it. But if a bill has been altered before acceptance or indorsement, the acceptor or indorsee cannot take any advantage of the alteration; and the consent of any one of the parties to the alteration will, in general, preclude him from objecting to it.

A bill of exchange, or promissory note, must regularly specify to whom it is to be paid; but if it be drawn payable to a fictitious person or his order, and indorsed in his name, by consent between the drawer and acceptor, it is in effect a bill payable to bearer, and may be declared on as such in an action by an innocent indorsee for a valuable consideration, against all the parties who knew that the payee was a fictitious person. Yet, in the case of Bennet *v.* Farnell, it was held, that a bill of exchange made payable to a fictitious person or his order, is neither in effect payable to the order of the drawer, nor to the bearer, but is completely void; though if money, paid by the holder of such a bill as the consideration of its being indorsed, actually get into the hands of the acceptor, it may be recovered back as money had and received.

The negotiability of a bill of exchange depends on the insertion of sufficient operative words of transfer. The modes of making a bill transferable are, by making it payable to *A. or order*, or *A.'s order*, or *to A. or bearer*, or *to bearer* generally.

It is not essentially necessary to insert the words "value received," they being implied in every bill and indorsement, as much as if they had been expressed. But, to entitle the holder of an *inland bill* or *note*, for the payment of £20 or upwards, to recover interest and damages against the drawer and indorser, in default of acceptance

of payment, these words should be inserted, and it is quite as well to use them always.

A bill of exchange is presumed to have been made upon a good and valuable consideration. But, between the drawer and acceptor, the drawer and payee and his agent, and the indorsee and his immediate indorser, the legality, or want of consideration, or the insufficiency of the amount thereof, may be insisted on by way of defence to an action on the bill; and where a bill is for accommodation, and the holder has given value only for a part of the amount, he cannot recover upon the bill beyond that sum.

Wherever the defendant is at liberty to insist on the want of consideration as a defence, he may also insist that the consideration was illegal. In those cases, in which the legislature has declared that the illegality of the contract, or consideration, shall make the bill or note void, *viz.* (where it was made in consideration of signing a bankrupt's certificate, 5 Geo. II. c. 39. sec. 11; or for money lost in gaming,* &c. 9 Anne, c. 14. s. 1; or for money lent on an usurious contract, 12 Anne, st. 2. c. 16; or for the ransom of a ship, 22 Geo. III. c. 25. s. 2; or made, or indorsed, &c. in France during the war, 34 Geo. III. c. 9. s. 4,) the holder, notwithstanding he took the bill *bonâ fide*, and gave a valuable consideration for it, can only resort to the party from whom he received the bill, and from whom he can recover only on the original consideration. But where the illegality of consideration is such as does not fall within the above-mentioned statutory prohibitions, the holder cannot be affected with the transaction between the original parties, unless he either had notice, or took the bill after it became due from a person who had notice of the illegal consideration on which the bill was given. And, in general, where the bill is fair and legal in its reception, a subsequent illegal contract or consideration taking place on the indorsement, &c., will not invalidate it in the hands of a *bonâ fide* holder.

Where a new security is taken in lieu of another, void in respect of usury, &c., it will be equally invalid in the hands of the party to the first illegal transaction, but not in the hands of a *bonâ fide* holder.

* It is held, that a bill of exchange, founded on a gambling transaction, is good in the hands of a real holder; and by 58 Geo. III. c. 93, a bill of exchange or promissory note, although founded upon an usurious contract, does not vitiate the same in the hands of a real holder, not knowing the usurious contract.

When a bill is drawn, payable within a certain time after sight, it is necessary, in order to fix the time when the bill is to be paid, to present it to the drawee for acceptance. In other cases, it is not essentially necessary for the holder to present the bill before it is due.

No particular time is fixed when a bill of exchange is to be presented for acceptance. The only rule in all cases of bills of exchange is, that due diligence must be used and care taken, that the bill be presented within a reasonable time.

Presentment should be made during the usual hours of business; but illness, or any other reasonable cause, will excuse a presentment within a reasonable time.

On the presentment of a bill, the drawee is entitled to keep it twenty-four hours in his possession after the presentment, for the purpose of examining whether he has any effects of the drawer's in his hands. But if he should require further time, the holder should give immediate notice to the indorsers and drawer.

In all cases of presentment for acceptance or payment of a bill, it is incumbent on the holder to present it at the house of the drawee. If he have removed, the holder must use every reasonable endeavour to find out where he has removed, and make presentment there. In case of his decease, presentment must be made to his personal representative, if he live within a reasonable distance: but if, on inquiry, it appears that the drawee never lived at the place where the bill states him to reside, or that he has absconded, then the bill is to be considered as dishonoured.

An acceptance may be either absolute or qualified. But whether absolute or qualified, is a question of law.

An *absolute* acceptance is an engagement to pay the bill according to the tenor. The most usual and formal method of making such an acceptance is, for the drawee to write on the bill the word "accepted," and subscribe his name; or to write the word "accepted" only; or merely to subscribe his name at the bottom or across the bill. For the convenience, however, of mercantile affairs, an acceptance, or promise to accept, by collateral writing, or even by parole, is equally binding with an acceptance on the face of the bill. Any act indeed of the drawee, which demonstrates a consent to comply with the request of the drawer, will constitute an acceptance. A promise of this nature, "Leave the bill, and I will accept it," will amount to an acceptance, although the holder had no consideration for the promise. A direction to a third person to pay the

bill written thereon, or any other paper relating to the transaction, will amount to an acceptance. A verbal or written promise to accept at a future period a bill already drawn, or that a bill then drawn shall meet due honour, or shall be accepted, or certainly paid when due, amounts to absolute acceptance.

And although, regularly, a bill ought to be accepted before the day on which the money is to be paid, yet an acceptance after the day will bind the drawee: the drawer and indorsers are however discharged, unless due notice of non-acceptance, or non-payment at the time the bill became due, were given.

An acceptance may be implied as well as expressed; and this implied acceptance may be inferred from the drawee's keeping the bill a great length of time, or any other act which induces the holder not to protest it, or to consider it as accepted.

But a promise to accept a bill not in existence at the time the promise to accept was given, but which was to be drawn at a future time, has been held not to amount to an acceptance, unless it influence some person to take or retain the bill.

Neither will the expression, "There is your bill—all is right," amount to an acceptance, unless intended to induce the holder to conceive it as such. And if the drawee say, he cannot accept without further direction from I. S., and I. S. afterwards desires him to accept, and draw upon A. B. for the amount, the mere drawing upon A. B. will not amount to an acceptance before the bill on A. B. is paid.

A *qualified* acceptance is when the drawee undertakes to pay the bill in any other manner than according to the tenor and effect thereof. This species of acceptance, if qualified with a condition, is called a *conditional acceptance.* The holder of the bill may consider a qualified acceptance as a nullity, and protest the bill for non-acceptance: but if he do receive it, he should, in order to bind the other parties to the bill, give immediate notice to them of the nature of the acceptance offered.

Any act which evinces an intention not to be bound, unless upon a certain event, is a conditional acceptance. Thus, an acceptance by the drawee of a bill, to pay "when goods consigned to him were sold;" or, "upon account of the ship Thetis, when in cash for the said vessel's cargo;" or, as "remitted for;" or an answer, "that the bill would not be accepted till a money bill was paid;"

have been held to be a conditional acceptance, and not to render the acceptor liable to the payment of the bill until the contingency has taken place; when such conditional acceptance will become as binding as an absolute one.

An acceptance may also be *partial;* as when the drawee undertakes to pay part of the sum for which the bill is drawn,* or to pay at a different time or place. But in all cases of a conditional or partial acceptance, the holder should, if he mean to resort to the other parties to the bill in default of payment, give notice to them of such conditional or partial acceptance. And, in the like circumstances, the acceptor should be careful to express in the acceptance the condition he may think proper to annex; for if the condition be not expressed in a written acceptance, he will not be entitled to avail himself of it against any subsequent party, between him and the person to whom the acceptance was given, who took the bill, without notice of the condition, and gave a valuable consideration for it. But if the agreement to accept be conditional, and a third person take the bill, knowing of the conditions annexed to the agreement, he takes it subject to those conditions.

If a bill be accepted payable at the house of the acceptor's banker, the party taking such special acceptance must present it for payment within the usual banking hours (which, in London, do not extend beyond five o'clock), at the place where it is made payable; if he present it after such hours without effect, it is no evidence of the dishonour of the bill, so as to charge the drawer.

By the 1 and 2 Geo. IV. c. 78, regulating the acceptance of bills of exchange, it is declared, that whereas, according to law as hath been adjudged, where a bill is accepted payable at a banker's, the acceptance thereof is not a general but a qualified acceptance; and whereas a practice hath very generally prevailed among merchants and traders so to accept bills, and the same have, among such persons, been very generally considered as bills generally accepted, and accepted without qualification; and whereas many persons have been, and may be much prejudiced and misled by such practice and understanding, and persons accepting bills may relieve themselves from all inconveniences by giving such notice as hereinafter mentioned of their intention to make only a qualified acceptance thereof; it is therefore enacted, that if any person shall accept a bill of exchange payable at the house of a banker or other place, without further expression to

his acceptance, such acceptance shall be deemed and taken to be, to all intents and purposes, a general acceptance of such bill; but if the acceptor shall, in his acceptance, express that he accepts the bill payable at a banker's house or other place *only, and not otherwise or elsewhere*, such acceptance shall be deemed and taken to be, to all intents and purposes, a qualified acceptance of such bill, and the acceptor shall not be liable to pay the said bill, except in default of payment, when such payment shall have been first duly demanded at such banker's house or other place. And no acceptance of any inland bill of exchange shall be sufficient to charge any person, unless such acceptance be in writing on such bill, or if there be more than one part of such bill, on one of the said parts.

In case of the failure of the drawer, the drawee ought not to accept bills after he is aware of that circumstance. But if the drawee, not having notice thereof, accept a bill drawn on him after such bankruptcy, he will be justified in paying his acceptance, although he has afterwards heard of the bankruptcy.

Liability of the Acceptor.

The acceptor of a bill of exchange, by reason of his acceptance, is, in case of its not being duly honoured, considered as primarily liable to all the parties to the bill; and an express agreement only will discharge him. It was formerly doubted, whether the drawer could maintain an action against the acceptor, if he had been obliged to pay the bill. But, in Parminster *v.* Symons, it was solemnly determined that the drawer of a bill of exchange might maintain in his own name, and without an assignment from the payee, a special action on the case against the acceptor, and recover the money so paid; he having paid the bill, and the drawee having effects of his in his hands.

This obligation of the acceptor is in general irrevocable; for if the drawee of a bill put his name on it as acceptor, he cannot afterwards, even before it has been delivered to the payee, discharge his acceptance by erasing his name, unless such acceptance has been made by mistake.

Neither can the liability of the acceptor be released or discharged, otherwise than by payment, or express release, or by the Statute of Limitations. Thus, the holder of a bill of exchange, having been informed that the acceptor had not received any consideration for it, for

several years after it became due received interest upon the bill from the drawer; but, at length, having commenced an action against the acceptor, it was held, that the action was maintainable, and that nothing but an express agreement would discharge the acceptor, and that no indulgence to him or the drawer would have that operation: A *verbal* release of the acceptor's responsibility will be sufficient. But to render this efficient, the words must amount to an absolute renunciation of all claim upon him in respect of the bill.

If a bill be presented, and an acceptance refused, or a qualified acceptance only offered, or any other default made, after protest, due diligence must be used in giving notice thereof to all the parties to whom the holder means to resort for payment. What is due diligence, is a question of law dependent on facts, *viz.* the situation of the parties, the place of their abode, &c. In case of a foreign bill, notice should be given on the day of the refusal to accept, if any post or ordinary conveyance sets out that day; and, if not, by the next early ordinary conveyance. Thus, in Muilman *v.* D'Equino, which was the case of a foreign bill of exchange drawn payable in the East Indies a certain time after sight, it was held, that it was not necessary to send notice of the dishonour by an accidental foreign ship which sailed thence not direct for England; but that it was sufficient to have sent notice by the first regular English ship.

With respect to inland bills, not protested for non-acceptance, notice of the refusal to accept should, in all cases, be given at least within the course of the following day. And when an inland bill is protested for non-acceptance or non-payment, if the protest, or notice thereof, be not sent within fourteen days after it is made, the drawer or indorser will not be liable for damages, &c. under the 3 and 4 Anne, c. 9, sec. 5.

The rule which requires notice to be given within a reasonable time by the holder of a bill of exchange to the drawer, of the drawee's refusal to accept, is calculated for the benefit of the drawer, to enable him to withdraw his effects out of the hands of the drawee. On this rule, however, an exception has been engrafted, *viz.* that where the drawer has not any effects in the hands of the drawee at the time when the bill is drawn, it is not necessary to give such notice to him, because in this case he cannot sustain any injury from the want of such notice. But if the drawer have effects in the hands of the drawee at the

time of drawing the bill, though it do not appear to what amount, and though such effects are withdrawn before the bill can be presented, the circumstance of there not being effects in the hands of the drawee at the time when the bill is presented for acceptance and refused, will not supersede the necessity of notice. In Walwyn *v.* St. Quintin, Chief Justice Eyre said, "Perhaps, indeed, notice ought never to be dispensed with, since it is a part of the same custom of merchants which creates the duty; especially as the grounds for dispensing with it are such as cannot influence the conduct of the holder of the bill, at the time when he is to determine whether he will or will not give notice; for, ninety-nine times in a hundred, he cannot know whether the drawer has or has not effects in the hands of the acceptor, or of him for whose accommodation the bill was drawn." It has, however, been resolved in many cases, that where the drawer has had no effects in the hands of the acceptor, notice might be dispensed with. But it may be proper to caution bill-holders not to rely on it as a general rule, that if the drawer have no effects in the acceptor's hands notice is not necessary: the case of acceptance on the faith of consignments from the drawer not come to hand, and the case of acceptance on the ground of fair mercantile agreements, may be stated as exceptions; and there may possibly be many others.

Immediately on the receipt of the notice, each party should give a fresh notice to such of those parties who are liable over to him, and against whom he must prove notice.

With respect to the drawer, it has been observed, that want of effects in the hands of the drawee, at the time of drawing the bill, will supersede the necessity of notice; but with respect to the indorsers, as they have not any thing to do with the account between the drawer and the drawee, notice of non-acceptance must be given to them by the holder of the bill. It is to be observed, however, that the rule requiring notice to be given even to the indorser, is applicable only to fair transactions, where the bill has been given for value in the ordinary course of trade.

But though the neglect on the part of the holder to give immediate notice of non-acceptance, discharges the parties entitled to insist on the want of it from their respective liabilities, yet the consequences of such a neglect may be done away by other circumstances. The ab-

sconding or absence of the drawer or indorser may excuse the neglect to advise him; and the sudden illness or death of the holder or his agent, or other accident, will be an excuse for the want of a regular notice to any of the parties, provided it has been given as soon as possible after the impediment is removed. So, want of notice may be excused by some act of the person entitled to insist on the want of it, which amounts to a waiver of the advantage which the law has given him; or, in case of a conditional acceptance, by the completion of those conditions before the bill becomes payable. Thus it has been held, that a payment even of part, or a promise to pay the whole, or to see it paid, or an acknowledgment that it must be paid, made by the person insisting on the want of notice, amounts to a waiver of the consequences of the *laches* of the holder, and admits his right of action. But the death, bankruptcy, or insolvency of the acceptor, or his being in prison, although within the knowledge of the drawer, will not supersede the necessity of notice of the dishonour of the bill; neither will the circumstance of the drawee's having informed the drawer, before the bill was presented for acceptance, or became due, that he could not honour it, be a sufficient excuse for not giving due notice. And though a *subsequent promise* by the indorser is a waiver of the want of notice, yet a subsequent proposal by the indorser to pay the bill by instalments, made without knowledge of all the circumstances relative to the bill having been dishonoured, has been held not to be a waiver of the want of notice.

With respect to money paid under a misapprehension of legal liability, from the case of Bilbie *v.* Lumley and others, it appears, that money paid by one having knowledge, or the means of such knowledge, in his power, of all the circumstances, cannot, unless there has been deceit or fraud on the part of the holder, be recovered back again on the account of such payment having been made under an ignorance of the law, although the party paying expressly declared that he paid without prejudice. However, payment made under a misapprehension of facts, and which there was no obligation to discharge, as where the holder had been guilty of *laches*, will not be binding; and may, if the party making it were prejudiced by the conduct of the holder, be recovered back.

If the party entitled to notice be a bankrupt, notice of the default of the drawee should be given to him or his assignee; if dead, to his executor or administrator. When

the party entitled to notice is abroad at the time of dishonour, it will be sufficient to leave notice of non-acceptance at his place of residence in England, and a demand of acceptance or payment from his wife or servant would in that case be regular.

With respect to the mode of sending notice, it seems that, in the case either of a foreign or inland bill, sending notice by the post, even though the letter containing such notice should miscarry, will be sufficient. But where it is necessary or more convenient for the indorsee to send notice by any other conveyance than the post, he may do so, and charge for the same. And, in all cases where notice is sent from London by the general post, the letter containing the notice should be delivered at the General Post Office in Lombard Street, or at least at a receiving house appointed by that office.

In all cases of notice, notice to one of several partners is held to be notice to all; and if one of several drawers be also the acceptor, it is not necessary to give notice to the other drawers.

On refusal of acceptance, either wholly or partially, the holder may insist on immediate payment by all the parties whose names appear on the bill. And on this principle it was decided, that where the defendant, having been arrested, gave the plaintiff a draft for part of the money due, on which he was discharged out of custody, but the draft having been dishonoured, he was retaken upon the same writ, and the proceedings were held to be regular. In this case Lord Kenyon said, that in cases of this kind, if the bill which is given in payment do not turn out to be productive, it is not that which it purported to be, and that which the party receiving it expected, and therefore he may consider it as a nullity, and act as if no such bill had been given.

As to the party by whom the notice should be given, it appears that, in general, the notice of non-acceptance or non-payment should come from the holder. And, therefore, where the indorser of a promissory note had, within a reasonable time after default of payment of the note, received notice thereof from the maker, but the plaintiff (the holder) had not given the defendant (the indorser) notice until two days after the bill became due; it was held that the plaintiff could not recover, and that due notice ought to be given by the holder himself to the indorser, within a reasonable time after default of payment. Mr. Justice Buller observed, that the purpose of giving

notice to the indorser, is not merely that the indorser should know that the note is not paid, for he is chargeable only in a secondary degree; but, to render him liable, you must shew that the holder looked to him for payment, and gave him notice that he did so. The notice by another person to an indorser can never be sufficient; but it must proceed from the holder himself.

If the drawee refuse to accept, or to pay the bill when due, the holder, or (if he be ill or absent) some other person for him, should *protest* it. Foreign bills of exchange ought to be presented to the drawee by a notary public, (to whom credit is given, because he is a public officer,) and acceptance demanded. If the drawee refuse to accept the bill, then the notary ought, within the usual hours of business, on the day when acceptance is refused, to draw a protest for non-acceptance. In case, however, there be not any public notary at the place where the bill is dishonoured, it may be protested by any substantial person of that place, in the presence of two or more witnesses. If a conditional or partial acceptance be offered, the protest should not be general, as otherwise it will release the acceptor from the effect of such acceptance.

At common law, no inland bill could be protested for non-acceptance; but by the 3 and 4 Anne, c. 9, sec. 4, it is enacted, "that, upon presenting such bills drawn for the payment of five pounds or upwards, in case the drawee should refuse to accept them by underwriting the same, the payee, his agent, &c., shall cause the same to be protested for non-acceptance, as in the case of foreign bills of exchange." By the sixth section, this protest is directed to be made by such persons as are appointed by the 9 and 10 Wm. III. c. 17, to protest inland bills for non-payment, *viz.* by a notary public, and, in default of him, by any substantial person of the place, in the presence of two or more credible witnesses. By the fifth section, when an inland bill is protested for non-acceptance, if the protest or notice thereof be not sent within fourteen days after it is made, the holder will not be entitled to the accumulative advantage of interest, damages, and costs.

The protest for non-acceptance in case of an inland bill is by no means necessary, and the want of it does not affect the holder's right to the principal sum, as it would in the case of a foreign bill of exchange. In practice it is seldom made; an inland bill is in general only noted for non-acceptance; but this, it has been said, is unknown in the law, as distinguished from the protest, and is merely a

preliminary step to the protest, which it will not in any case supply the want of.

If a bill have been noted for non-acceptance on the day of refusal, the protest may be drawn any day after by the notary, and be dated the day the noting was made.

If, after the acceptance, the drawee abscond, or become a bankrupt before the bill is due, it is said to be the custom of merchants for the holder to protest it, in order to have better security for the payment. But, though the holder is entitled to make this protest, the drawers or indorsers are not compellable to give this security; in which case the holder, before he can sue them, must wait until the bill become due.

When a foreign bill is protested for non-acceptance, or for better security, the drawee may, if he do not choose to accept on the account of him in whose favour the bill is drawn, accept it under protest, which is called an acceptance for the honour of the person on whose behalf it is made, and it enures to the benefit of all who become parties subsequently to that person.

If the drawee refuse to accept the bill, or abscond, or be incapable of making a contract, any other person may, without the consent of the drawers or indorsers, accept it for the honour of the bill, or of the drawer, or of any particular indorser; and even a bill previously accepted under protest, may be accepted by another person under protest, in honour of some particular person.

Of the Indorsement and Transfer of Bills of Exchange.

Bills payable to order, or to bearer, are equally negotiable from person to person; and the transfer of them for a good and valuable consideration vests, in favour of commercial intercourse, a right of action in the assignee, sustainable in his own name.

But in general, unless the operative words of transfer, *viz.* "or order," "or bearer," or some other words authorising the payee of a bill to assign it, be inserted therein, it cannot be transferred, so as to give the assignee a right of action against any of the parties except the indorser himself; unless the negotiable words were omitted by mistake. It is, however, not essential to the validity of a bill, that it should contain negotiable words, so as to render it transferable.

Any words or extraneous facts in a bill payable to the fictitious payee, from which an inference can be drawn, that the drawer, or any other party to the bill, intended

it to be negotiable, will give it a transferable quality against that person. And in all cases, though no operative words of transfer are inserted in the bill, yet it will always have the same operation against the party making the transfer, as if he had power to assign: for a transfer of a bill of exchange by indorsement is an act similar in effect to making a new bill; the obligation which it imposes on the indorser to the indorsee, and the mode in which that obligation may be extinguished by the holder's *laches* or otherwise, is in all respects exactly similar to that which the drawer of a bill is under to the payee.

As to the capacity of transferring a bill of exchange, it may be said, in general, that a valid transfer can only be made by the payee; for if a bill payable only to bearer, or order, and indorsed in blank, is transferred, if the assignee, at the time of his becoming the holder, knew that the person making the transfer had no right to it, such transfer is inoperative, unless such assignee had no knowledge of such circumstance, and took the bill *bonâ fide*.

An infant payee cannot by indorsement raise any interest in the bill against himself, though a subsequent indorser may be liable. And where a bill has been made to a *femme covert*, or to a *femme sole* who afterwards marries, the right of transfer rests in her husband, and the indorsement must be in his name.

So, in case of bankruptcy, the right of transfer is in general vested in the assignee from the time of the act of bankruptcy. But it has been held, that if a trader deliver a bill for a valuable consideration to another, previously to an act of bankruptcy, without indorsing it, he may indorse it after his bankruptcy.

In case of the bankruptcy of a factor or banker, bills remitted to them, and entered short, while unpaid, being considered in the nature of a deposit, must be returned by the assignees to the owner, subject to such lien as the factor or banker may have on them. And if payment be received upon such bills by the assignees, they must refund it to the owner.

Where a bill is transferred to several persons in partnership, the right of transfer is in all collectively, and not in any individually; the right, however, may be put in force by the indorsement of one partner.

An indorsement of a bill of exchange may be made at any time, either before it is complete, or after the time appointed for the payment of it. If it be indorsed before

it is complete, as if a man indorse his name on a blank stamped piece of paper, it will have the effect of binding the indorser to the amount of any sum which may be inserted consistent with the stamp, and made payable at any date. If the indorsement take place after the time of the bill's becoming due, in order to make the transfer valid, the bill must remain unpaid by any of the parties.

Bills drawn for a less sum than five pounds cannot be indorsed after the time of their becoming due. 17 Geo. III. c. 30, sec. 1.

With respect to a transfer made before a bill is due, and one made when it is over-due, there is a material distinction. In the former case, the assignee is not bound to inquire into the circumstances existing between the assignor and any of the previous parties to the bill, as he will not be affected by them. But in the latter, whether the transfer has been made by indorsement or mere delivery, it is incumbent on the indorsee to satisfy himself that the note is a good one: and if he omit to do so, he takes it on the credit of the indorser, and must stand in the situation of the person who was holder at the time of its becoming due.

In general, an indorsement cannot be made after payment, so as to affect any of the parties except the person making such indorsement. But a person not originally a party to the bill, by paying it for the honour of the parties to it, acquires a right of action against all those parties.

By the 44 Geo. III. c 98, sec. 20, certain notes, not exceeding £20, and payable to bearer on demand, are reissuable after payment, at any time within *three years* after the date.

After payment of a part, a bill may be indorsed over for the residue.

Indorsements are of two kinds, in blank or in full. An indorsement in blank, which is the most common, is made by writing the indorser's name on the back of the bill, without any mention of the name of the person in whose favour the indorsement is made. A bill payable to a certain person or bearer, or to bearer generally, or originally payable to order, and indorsed in blank, is transferable by the indorsee, either by indorsement or mere delivery.

If A. (the payee of a bill of exchange) indorse it in blank, and deliver it to B., and B. write above A.'s indorsement, "Pay the contents to C.," without subscribing

his own name, B. is not liable to C. as an indorser of the bill; for, in order to make a party liable as an indorser, his name must appear written with an intent to indorse.

A full or special indorsement mentions the name of the indorsee in whose favour the indorsement is made, as thus, "Pay the contents to A. B. or order," and is subscribed with the name of the indorser. By this indorsement, the interest in the bill is transferable in the first instance by indorsement, though afterwards it is transferable also by delivery, provided the first indorsement was in blank. But to give the bill a subsequent negotiable quality, it is not necessary that in a full indorsement the words "or order," should be subjoined to the name of the indorsee; for if a bill be drawn payable to order, the negotiability of the bill will not be restrained by the omission of the words "or order," in the indorsement.

A bill payable to the order of A. is payable to A., if he do not order it to be paid to any other person; and where no such order appears, it will be presumed that none was made.

The negotiability of a bill originally transferable may be restrained by express restrictive words; for the payee or the indorsee having the absolute property in the bill, he may by express words restrict the currency of the bill, by indorsing it, "payable to J. S. only," or to "J. S. for his use," or any other words clearly demonstrating his intention to make a restricted and limited indorsement.

A transfer by indorsement for a good and valuable consideration, and without any knowledge of defect of title, vests in the indorsee a right of action against all the precedent parties whose names are on the bill; but unless the payee, or the drawer, when the bill was payable to his order, have first indorsed it, the holder can only sue the party from whom he obtained it.

A transfer by delivery, without any indorsement, when made on account of a pre-existing debt, or for goods sold at the time of the assignment, imposes an obligation on the assignor, in favour of the assignee, similar to that of a transfer by indorsement; and, in default of payment by the drawee, the assignee may maintain an action against the assignor on the consideration of the transfer, unless it were expressly agreed, at the time of the transfer, that the assignee should take the instrument assigned as payment, and run the risk of its being paid, or that he has been guilty of *laches*. But, as on a transfer by delivery the assignor's name is not on the instrument, there is no

privity in contract between him and any person becoming assignee to the bill after the assignment by himself, and consequently no person but an immediate assignee can maintain an action against him, and that only on the original consideration, and not on the bill itself.

In case of the loss of a bill, &c. transferable by mere delivery, any person who has, previously to its becoming due, given a *bonâ fide* consideration for it, may enforce payment against the acceptor or other parties, notwithstanding he derived his interest in the bill from the person who found or stole it. And if a lost or stolen bill, transferable by mere delivery, and for which no consideration has been given, be presented to the drawee at the time of its becoming due, and he pay it before he has notice of the loss or robbery, he will not be liable to pay it over again to the real owner, who, by his neglect to give due notice of his loss, has forfeited all right of action.

But when a bill, transferable only by indorsement, and not indorsed, is lost by the person entitled to indorse, no person getting possession of it by a forged indorsement will acquire any interest in it, although he gave a sufficient consideration for it, and was not aware of the forgery, but will be liable to repay the bill to the original holder when he has regained possession of it. And in such a case, if payment hath been obtained by a *bonâ fide* holder from the drawee, such payment will not be protected.

In case of the loss of a bill, to entitle the holder to recover, he should immediately give notice thereof to the acceptor and all the antecedent parties; and when the bill is transferable by mere delivery, should also give public notice of the loss; but this will not be available, unless the notice of the loss be brought home to the knowledge of the party taking the bill.

By the 9 and 10 Wm. III. c. 17, sec. 3, it is enacted, that in case any inland bill, expressed to be for value received, and payable after date, shall happen to be lost or miscarried, within the time before limited for payment of the same, the drawer must give another bill, of the same tenor with that first given; the person to whom it is delivered giving security, if demanded, to the drawer, to indemnify him against all persons whatsoever, in case the bill, so alleged to be lost or miscarried, shall be found again. And Marius says, that if the acceptor refuse, on sufficient security, and indemnification offered, to pay a bill which he has accepted, he will be liable to make good all loss, re-exchange, and charges (p. 77.)

In all cases of the loss of a bill of exchange, a Court of Equity will, on sufficient indemnity being given, enforce payment.

Presentment for Payment.

In all cases when a time for payment is specified in a bill of exchange, the holder must present it to the drawee for payment at the time when due; and when no time of payment is expressed, within a reasonable period after receipt of the bill; or otherwise the drawer and indorsers will be exonerated from their liability. And it has been held, that even the bankruptcy, insolvency, or death of the acceptor, will not excuse a neglect to make presentment. In the first case, presentment should be made to the bankrupt or his assignees; and, in the latter, to the personal representative of the deceased, or, in case there be no personal representative, at the house of the deceased. Neither will the insufficiency of a bill in any respect constitute an excuse for the non-presentment.

But all bills of exchange drawn payable at usance, or at a certain time after date or sight, or after demand, ought not to be presented for payment at the expiration of the time mentioned in the bills, but at the expiration of what are termed days of grace. And on bills payable to the excise, *six* days beyond the three days of grace are allowed, if required by the acceptor. But in the case of bills payable on demand, or when no time of payment is expressed, no days of grace are allowed; but they are payable instantly on presentment. On Bank post bills, also, no days of grace are claimed.

Whether days of grace are allowable on bills of exchange payable at sight, is not clearly decided; it is observable, however, that the weight of authority is in favour of such an allowance.

In case of foreign bills of exchange, the custom is, that three days, exclusive of the day on which the bill becomes due, are allowed for payment of them; and if they be not paid on the last of the said days, the holder ought immediately to protest the bill, and return it, or otherwise the drawer will be discharged. But if it happen that the last of the three days is a Sunday, Christmas-day, Good Friday, or a fast or thanksgiving day, the holder ought to demand payment on the second day, and if it be not then paid, treat the bill as dishonoured. A presentment before the day would be a mere nullity.

With respect to inland bills payable after date or sight,

or on a particular event, it does not appear to be settled whether the acceptor has not the whole day for payment, without reference to banking hours. At all events, if the holder make a second presentment on the last day of grace, the acceptor may insist on paying it when such presentment is made, without paying the fees of noting or protesting, notwithstanding such presentment be made after banking hours, and expressly for the purpose of noting and protesting. But a tender after the day of payment, and before action brought, of all money then due, is sufficient.

The days of grace which are allowed on a bill of exchange must always be computed according to the law of the place where it is due. In the dominions of Great Britain, Bergamo, and Vienna, three days are allowed; at Frankfort, out of the fair-time, four; at Leipsic, Naumberg, and Augsburgh, five; at Venice, Amsterdam, Rotterdam, Middleburgh, Antwerp, Cologn, Breslaw, Nuremburg, Lisbon, and Portugal, six; at Naples, eight; at Dantzic, Koningsburgh, and France, ten; at Hamburgh and Stockholm, twelve; in Spain, fourteen; at Rome, fifteen; Genoa, thirty. At Leghorn, Milan, and some other places in Italy, there is no fixed time. Sundays and holidays are always included in these days of grace in Great Britain, Ireland, France, Naples, Amsterdam, Rotterdam, Antwerp, Middleburgh, Dantzic, and Koningsburgh; but not at Venice, Cologn, Breslaw, and Nuremburg. At Hamburgh, and in France, the day on which the bill falls due makes one of the days of grace, but no where else.

The causes by which a neglect to present for payment may be excused, being the same as those which do away a neglect to present for acceptance, it would be a repetition to mention them here; we therefore refer the reader to that head.

If the political state of the country where the bill is due, render a presentment for payment in due time impossible, presentment as soon as is practicable will entitle the holder to recover.

The contract of the acceptor being absolute, he is primarily liable, and cannot in general resist an action on account of the neglect to present the bill at the precise time when due: but if he undertook, by his acceptance, to pay within a certain period after demand, he may insist on the want of presentment.

If a bill be made or accepted payable at a banker's, or

at any particular place, or by a particular person not party to the instrument, the presentment for payment should in such case be complied with, or the drawee and indorsers will be discharged from their obligations; as will also the acceptor, if he has been really prejudiced.

A presentment for payment of a bill should, in all cases, be made within a reasonable time before the expiration of the day on which it becomes due; and if, by the known custom of any particular place, bills are payable only within limited hours, a presentment out of those hours would be improper, and would not entitle the notary to present it.

Payment should be made only to the holder of a bill, or some person properly authorised by him. In case of the death of the holder, payment should not be made to his personal representative, unless he has power to administer to his effects. But payment of a bill to a person having obtained probate of a forged will, will be valid. So payment to a minor will be valid, if the bill be beneficial to him. But payment to a married woman, after knowledge of that fact, will not be valid.

Payment of a bill to a person, or his order, without knowledge of his having committed an act of bankruptcy, is effectual, and discharges the person making it, 1 Jac. I. c. 15, sec. 14; provided such payment be made more than two calendar months before the issuing of the commission, 46 Geo. III. c. 125, sec. 112. And payment of an acceptance made without notice of a secret act of bankruptcy, is, provided the bill is honoured when due, valid, although between the time of acceptance and of payment notice of the bankruptcy came to the creditor's knowledge.

So payment of a bill by a bankrupt to a *bonâ fide* creditor, without notice of the bankruptcy, is protected by 19 Geo. II. c. 32, provided such payment be made more than two calendar months before the issuing of the commission, 46 Geo. III. c. 125, sec. 112. And if, when the bill becomes due, the acceptor be a bankrupt, the holder will be entitled to claim under the commission, without discharging the other parties whose names appear upon the bill from their respective liabilities, provided he has given them regular notice of non-payment. If a promissory note of twenty years' date be unaccounted for, it affords a presumption of payment, unless the contrary appear.

When a creditor directs his debtor to remit him by post

the money due to him by a bill of exchange, &c. or where it is the usual way of paying a debt, if the bill be lost, the debtor will be discharged; but where the defendant, in discharge of a debt which he owed to the plaintiff, delivered a letter containing the bills, which were lost, to a bellman in the streets, it was decided that he was not discharged from liability to pay the debt, because it was incumbent on him to have delivered the letter at the General Post Office, or at least at a receiving-house appointed by that office.

If, when a bill becomes due, the holder give time to the drawer, or release him when he has taken him into custody, or take a fresh security from him, without the concurrence of the other parties to the bill, they will thereby be discharged in general from all liability, although the holder may have given due notice of the non-acceptance. Similar indulgence to a drawer, or a prior indorser, would also discharge all subsequent parties. But in the instances before stated, where the *laches* of the holder, in not giving notice of the non-acceptance of the bill, will be excused by the circumstances of the drawer, indorser, &c. not having effects in the hands of the drawee, such parties would also not be discharged by the holder's giving time to, or taking a fresh security from the acceptor.

The holder of a bill of exchange may receive part payment from the acceptor or indorser, and sue the other parties for the residue, *provided he do not give time to such acceptor or indorser to pay the residue.*

If the holder of a bill of exchange compound with the acceptor or any other party to the bill, without the assent of the drawer or other subsequent parties, he thereby releases them from their responsibilities, if they had effects in the hands of the acceptor or prior indorser.

The holder may sue a prior indorser, although he had taken in execution a subsequent indorser, and afterwards let him go at large on a letter of licence, without having paid the debt.

In all cases of the payment of a bill or note, a receipt should be written upon the back of the bill (43 Geo. III. c. 120, sec. 5); and as a general receipt on the back of a bill of exchange is *primâ facie* evidence of its having been paid by the acceptor, when payment is made by the drawer or indorser, the holder should state in the receipt by whom it is paid. Where a part is paid, the same should be acknowledged upon the bill, or the party pay-

ing may be liable to pay the amount again to a *bonâ fide* indorsee.

If, on presentment of a bill, the drawee refuse to pay the amount, or make default of payment, in case the bill is foreign, it is incumbent on the holder to protest it, and, whether foreign or inland, to give due notice of the dishonour to those parties to whom he means to resort for payment, or they will be discharged from their respective obligations.

Where there are several indorsements, and the holder gives notice of dishonour to his indorser, each successive indorser will be considered as having used due diligence, if he transmit the notice of dishonour on the day after it is received; but if he neglect giving the notice on that day and the day after, it will be too late.

The notice of dishonour must proceed from the person who can give the drawer or indorser his immediate remedy on the bill. And, therefore, in an action against the defendant as indorser of a bill, to prove notice of non-payment, A. was called, who swore that he had been employed by the original parties to the bill to get it discounted; and, when it became due, it was in the hands of one Abbott, to whom the plaintiff had indorsed it; that the day after the witness met the defendant, and told him that it had not been paid; that the defendant asked who held; and that the witness answered, "It lies at Messrs. Bonds, Abbott's bankers." Lord Ellenborough said, "If you could make A. the agent of the holder of the bill, the notice would be sufficient; but, in reality, he was a mere stranger. The bill, when dishonoured, lay at the bankers of Abbott, with whom A. had no sort of connexion. But the notice must come from the person who can give the drawer or indorser his immediate remedy upon the bill; otherwise it is merely an historical fact. In this case, A. was not possessed of the bill, and had no control over it. The defendant, therefore, is not proved to have had any legal notice of the dishonour of the bill, and is discharged from the liability by indorsing it."

In addition to notice of dishonour, it is necessary for the holder, in the case of a foreign bill, to protest it for non-payment; which protest, or at least a minute of it, should be made on the last day of grace. But when the bill has been already protested for non-acceptance, and due notice thereof has been given, though usual, it is not necessary to protest for non-payment, or to give notice thereof.

Payment of a bill, whether foreign or inland, being re-

fused, any third person, not party to the bill, may pay for the honour of the drawer, or any of the indorsers, and acquires thereby all the same rights that the holder of the bill had, although no regular transfer of the bill was made to him. This payment, as it is always made after protest, and in prudence should not be made before, is called payment *under protest*. But the acceptor, if he has previously made a simple acceptance, cannot pay in honour of an indorser, unless he has made such acceptance without having effects of the drawer in his hands; because, as acceptor, he is already bound in that capacity. If the acceptor *under protest*, for the honour of the drawer or indorser, receive his approbation of the acceptance, he may pay the bill without any protest for non-payment.

The validity of promissory notes having been much questioned by Lord Holt, in Clerk *v.* Martin, that the payee, and in Buller *v.* Crips, that the indorsee of a promissory note could not maintain an action against the maker thereof, such note not being within the custom of merchants, but that it was to be considered only as evidence of a debt; it was, for the purpose of encouraging trade and commerce, enacted by 3 and 4 Anne, c. 9, sec. 1, "That all notes in writing, made and signed by any person or persons, body politic or corporate, or by the servant or agent of any corporation, banker, goldsmith, merchant, or trader, usually entrusted by them to sign such notes for them, whereby such persons, &c. or their servant or agent, promise to pay to any other person or persons, body politic or corporate, or order, or bearer, the money mentioned in such note, shall be construed to be, by virtue thereof, due and payable to such person, &c. to whom the same is made payable; and also such note, payable to any person, &c. or order, shall be assignable or indorsable over in the same manner as inland bills of exchange are or may be by the custom of merchants: and the person, &c. to whom the money is payable may maintain an action for the same, in such manner as he might upon any inland bill of exchange made according to the custom of merchants: and the person, &c. to whom such note is indorsed or assigned may maintain an action, either against the person, &c. who, or whose servant or agent, signed such note, or against any of the persons who indorsed the same, as in cases of inland bills of exchange, and the plaintiff shall recover damages and costs of suit; and in case of nonsuit or verdict against the plaintiff, the defendant shall recover costs."

This statute places promissory notes on the same footing as bills of exchange, and consequently the decisions and rules relating to the one are in general applicable to the other.

No formal set of words is essential to the validity of a promissory note. Neither is it necessary that it should contain any words rendering it negotiable. A note merely promising to account with another, or his order, for a certain sum, value received, is a valid promissory note, though it contain no formal promise to pay. To render such a note valid, however, it must be made payable at all events, and not out of a particular fund; and it must be for the payment of money only, and not for the performance of any other act. A written promise to pay £300 to B. or order, "in three good East India bonds," was held not to be a promissory note: and an undertaking to pay money, and deliver up horses and a wharf on a particular day, or an engagement to pay money on demand, or surrender the body of A. B. will not operate as a note within the statute of Anne.

A note beginning "I promise to pay," and assigned by two or more persons, is several as well as joint, and the parties may be sued jointly as well as severally; but when a promissory note is made by several, and expresses "We promise to pay," it is a joint note only.

LAW OF COMPOSITION FOR DEBTS, WITH PRECEDENTS.

Where a debtor's affairs are in a state of embarrassment, it is generally as advantageous to his creditors as to the debtor himself, that an arrangement should be made by which he may be enabled to give up his attention to his business without fear of molestation; as a concern which, by diligence and activity on the part of the trader, might speedily become sufficient to satisfy every demand upon it, is frequently rendered desperate by the neglect consequent on the perplexity of mind which must necessarily result from the importunity of impatient creditors; and hence agreements of composition with creditors, when made without fraud, and upon a fair representation, are

approved of by the Courts of Equity, and they will assist in carrying them into effect. But if there be any fraud or misrepresentation, in order to deceive the creditors, they will be set aside as well in equity as at law; and in cases of imputed fraud, the question will turn upon the intention of the party.

On a meeting of creditors to investigate a debtor's affairs, or to receive a proposition respecting the liquidation of his debts, it is proper that a memorandum of the terms agreed upon or proposed, should be signed by the parties present; and the following form is recommended, as better calculated than a more concise one, to prevent subsequent differences.

Agreement at a Meeting of Creditors to Compound Debts, and give Time for Payment.

MEMORANDUM OF AN AGREEMENT entered into this day of , in the year of our Lord . BETWEEN (*the debtor*) [*or debtors*] (copartners in trade), (*or* (A. B.) of, &c. for and on the behalf of (*the debtor*) [*or debtors*] of, &c.) of the one part, and (*the creditors*) of, &c. creditors of the said (*debtor*) [*or debtors*] of the other part. WHEREAS the said (*debtor*) is indebted to various persons in several sums of money, which he is at present unable to discharge. AND WHEREAS at a meeting of the creditors of the said (*debtor*) this day convened by the said A. B. at , it was stated by the said A. B. (*or debtor*) and appeared to the major part of the persons then present, that the estate and effects of the said (*debtor*) were sufficient to answer the sum of *s.* in the pound, and that there was great probability, if he were permitted to pursue his business of without any further molestation from his creditors, he would, within the space of years, be enabled to pay the further sum of £ , [or fully to satisfy all debts and demands upon him.] NOW THEREFORE the several persons whose names are hereunto subscribed, upon the faith of the statement so made to them, do hereby agree to accept of the sum of *s.* in the pound, upon their respective debts, within the space of calendar months from the date hereof, to be secured (*if so agreed*) by bills of exchange to be drawn upon the said A. B., by and as the surety of the said (*debtor*) and delivered to them respectively, within days from the date hereof, and to accept of the further sum of *s.* in the pound, making in the whole the

sum of s. in the pound, to be secured by an assignment or other conveyance to be forthwith made of his estate and effects (except wearing apparel) to the above-named (*two or more creditor-trustees*) or other fit and proper persons, upon the trusts hereinafter mentioned, or referred to. And the said several creditors, parties hereto, do hereby strongly advise and recommend all other the creditors of the said (*debtor*) to accede to the terms above proposed, as being in their opinion the best that the circumstances of the said (*debtor*) will admit. And it is hereby agreed by the said creditors, parties hereto, and the said (*debtor*) [or the said A. B. on the part of the said (*debtor*)] that there shall in the said deed of assignment and conveyance be contained all such provisoes, declarations, and agreements, as the counsel in the law of the said trustees shall advise [and in particular (if thought fit) the following, that is to say, that the trustees therein named shall sell or otherwise dispose of or retain and manage the property of the said (*debtor*) at their discretion, and that their receipts shall be sufficient discharge, and stand possessed of the money to arise thereby, after defraying the expenses of the said assignment, and of executing the trusts thereof, and payment of rent, taxes, salaries, and wages of clerks and servants, upon trust, to satisfy in full (if they shall think proper) the several creditors of the said (*debtor*) whose debts shall not exceed, or who shall be willing to accept of the sum of £ in full of their debts, or who by reason of infancy or other disability may be incapable of legally consenting to the said assignment. And after payment thereof, upon trust, to divide the residue of the said monies in equal proportions between other his creditors who shall become parties or accede to the said assignment, until they shall respectively have received the sum of s. in the pound, and pay over the residue of the said monies, if any, to him the said (*debtor*). And in the said deed of assignment and conveyance there shall be contained powers for the said trustees to require all debts alleged to be due to the said creditors to be verified upon oath, and all securities for the same to be delivered up. And also to pay dividends upon sums accruing due upon bills of exchange, or other securities, retaining the discounts in like manner as under commissions of bankruptcy; And to discharge extents and the costs relative thereto; And to set apart the debts of such creditors as shall be beyond sea; And to pay such creditors the full amount of their

debts after years for the purpose of finally closing the trust account; AND to compound for or give time for payment of debts owing to the said (*debtor*); AND to sign the certificates of bankrupts indebted to him; AND upon the sale of any part of the said trust property, to give time for the payment of the purchase money; AND to buy in any part thereof attempted to be sold by auction; AND to arrange with creditors entitled to a transfer of stock; AND to exclude from the benefit of the trust all creditors who (not being abroad) shall not accede thereto within years from the date thereof, and, if abroad, then within years next thereafter: AND also those who shall not have given notice of their debts before a final dividend shall have been made of the effects of the said (*debtor*); AND to refer doubts respecting the amount of any debts to arbitration; ALSO to hire a counting or other house for conducting the affairs of the said (*debtor*); AND to employ clerks and other persons to assist therein, at or for such salaries or other remuneration, and with such discretionary powers as they the said trustees shall think proper; AND to commence or defend any suits or actions respecting the said trust estate: AND to give effectual discharges to persons paying money on the account of the said (*debtor*); AND a declaration that the execution of the said assignment or conveyance, by creditors having prior securities for their debts, shall not invalidate the same. AND ALSO in the said assignment or conveyance there shall be contained covenants on the part of the said trustees to apply the trust monies according to the trusts therein to be contained, and to deposit all monies and securities which they shall receive, with some banker or bankers, in , for the benefit of the said creditors; And state their accounts every months, if required by any three of the creditors whose debts shall respectively amount to £ ; And that upon payment to the said creditors of *s.* in the pound, the said trusts shall cease, and the trustees shall stand possessed of the residue, if any, of the trust property in trust for the said (*debtor*). AND in the said assignment or conveyance, the said (*debtor*) shall covenant that he hath made a full discovery of his estate and effects to the best of his knowledge; AND that he will make oath to the truth of the accounts delivered in by him, if required; AND assist the trustees in the execution of the trusts to the best of his power.] And in the said assignment or conveyance there shall be given to the said (*debtor*) full liberty and licence

to follow any his affairs within the United Kingdom, without molestation, for the space of months from the date thereof, on the penalty of the creditors acting contrary thereto to forfeit their debts. And moreover a proviso and agreement, that in case all the creditors of the said (*debtor*) whose debts shall respectively amount to £ or upwards, do not come in within the space of then next ensuing, if resident in any parts of the United Kingdom, and within the space of , if resident elsewhere, the said assignment and the trusts thereof, except so far as the same shall have been carried into effect, shall be void. And that in case the said sum of *s.* in the pound shall not be paid within the space of years from the date thereof, the creditors shall be at liberty to sue for the whole of their debts then remaining unpaid. And in the said assignment or conveyance shall also be contained the usual powers for appointing new trustees, and clauses for their indemnity, and payment of their expenses. And that any doubts upon the construction of the said assignment shall be determined by the opinion of the counsel to be named by the said trustees. And, lastly, that the decision of the major part of the said trustees relative to any of the matters or things aforesaid, shall be binding upon the rest and upon other the said creditors.

In witness, &c.

A simple agreement between creditors to accept of a composition in satisfaction of their demands, is *not* binding upon them while it remains in an executory state, such agreement being void for want of a consideration; but it is otherwise, if it is *under seal*, or if the agreement be executed *by acceptance of a poundage* under the deed; or where an assignment is made by the debtor of his effects to trustees, which would be a good consideration at law to support a promise of forbearance; or where the payment is guaranteed by a third person. An agreement of the nature of the preceding ought, therefore, to be immediately followed by a more formal instrument. We subjoin the following precedents, which may be adapted to the various circumstances of the parties.

A Deed of Composition between a Debtor & his Creditors, where the Debtor is allowed to carry on his Business under the control of Inspectors.

This Indenture, of parts, made the day of , [in the year of the reign, &c. and]

in the year of our Lord . Between (*debtor*) [or *debtors*] of, &c. of the first part, (*inspectors*) of, &c. being respectively creditors of the said (*debtor*) and also inspectors of his concerns, appointed for the purposes hereinafter mentioned, of the second part, and the several other persons whose names and seals are hereunto subscribed or affixed, being creditors also of the said (*debtor*) [or *debtors*] of the third part. Whereas the said (*debtor*, or, &c.) is indebted to the several persons who are hereinbefore named as parties hereto of the second and third parts respectively, in the several sums of money placed opposite to their respective names in the schedule hereunder written. And whereas at a meeting of the creditors of the said (*debtor*) on the day of now last past, it was represented and satisfactorily made to appear to them by the said (*debtor*) that by reason of various unforeseen losses and obstacles in trade he was rendered unable to pay the several demands upon him immediately, but that his stock in trade and other his estate and effects were amply sufficient for that purpose, wherefore it hath been mutually agreed by and between the several parties hereto, that the term of years should be given to the said (*debtor*) to collect in and dispose of his said estate and effects, and that in the mean time he should be permitted to manage and improve the same, under the inspection of the said (*inspectors*), who have been unanimously chosen for that purpose, under and subject nevertheless to the conditions, stipulations, and agreements hereinafter contained respecting the same. Now this Indenture witnesseth, that in pursuance of the said agreement, and for and in consideration* of the covenants and agreements hereinafter contained on the part of the said (*debtor*) to be performed and observed; They the said (*inspectors*) and the several other persons, parties hereto of the third part, for themselves respectively, and their respective partners, and his and their several and respective heirs, executors, and administrators, but not any one of them for the other or others of them, or for the heirs, executors, administrators, or partners, or the acts or deeds of any other or others of them,

* If bills are to be given by the debtor, say,
"For and in consideration of several bills of exchange bearing date respectively the day of and drawn by the said creditors and accepted by the said (*debtor*) to the amount of shillings in the pound upon their respective debts, the receipt whereof they do hereby respectively acknowledge, and of," &c. *as in the text.*

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but each for himself only and his own heirs, executors, administrators, and partners, and their acts and deeds respectively, HAVE and each of them HATH given and granted, and by these presents DO and each of them DOTH give and grant unto the said (*debtor*) full, free, and absolute liberty and licence to carry on, conduct, and manage all and every his said trade or business of   and other his affairs and concerns, and collect, get in, and sell, dispose of, convey, and assign all or any part of his estates, debts, and effects, under the inspection, and subject to the approbation and control of the said (*inspectors*) from henceforth until the   day of   , which will be in the year of our Lord   , if he the said (*debtor*) shall so long live, and continue to observe and perform the several covenants and agreements hereinafter contained on his part or behalf to be observed or performed, [unless these presents shall sooner become null and void by virtue of the provision hereinafter contained in that behalf.] And that they the said parties, creditors as aforesaid, or any or either of them (each covenanting separately as aforesaid) shall not nor will, during the time or period, and observance and performance aforesaid, sue, arrest, or prosecute him the said (*debtor*), or in any way impede or molest him in the carrying on or management of his said business or concerns, or the sale or disposition of his estate and effects, under such control and inspection as aforesaid, nor seize or possess themselves of, or in any wise attach or intermeddle with his goods, estates, property, or effects, in any wise whatsoever. AND each of them the said parties hereto of the second and third parts respectively, do hereby consent and agree, that in case any or either of them, or any or either of their executors, administrators, partners, and assigns, do or shall act in any wise contrary to the covenant and agreement lastly hereinbefore contained, he the said (*debtor*), his heirs, executors, and administrators, shall be, and he and they is and are by these presents thenceforth and for ever acquitted, exonerated, and discharged of and from all and every the debts, claims, and demands whatsoever, which now are or is due and owing to them respectively, [and of and from all actions, suits, and proceedings whatsoever to be had or taken for or in respect of the same,] and that in every such case this present letter of licence and agreement shall or lawfully may be shown and pleaded in release of, and bar to all and every such debt and debts, and actions, suits, and proceedings

for recovery thereof, as effectually and beneficially as if a general release or acquittance for the same respectively had been given under his or their hand and seal, or respective hands and seals. And the said (*debtor*) for and in consideration of the licence and privilege so hereby given to him as aforesaid, doth hereby for himself, his heirs, executors, and administrators, covenant, promise, and agree with and to the said (*inspectors*) respectively, and their respective executors, administrators, partners, and assigns, and also with and to all and every other the creditors of him the said (*debtor*) parties hereto, and their respective partners, and their and each and every of their executors, administrators, and assigns, in the manner following, that is to say, that he the said (*debtor*) shall and will forthwith, and as soon as conveniently can be hereafter, make out and fairly state in writing under his hand, a true and exact account of all and singular his debts and credits, claims and demands, and estate, property, and effects whatsoever, and of the several charges, outgoings, liens, and incumbrances upon or affecting the same respectively, and deliver the same, or a fair and true copy thereof, unto each of them the said (*inspectors*) on or before the day of next ensuing the date of these presents. And further, that he the said (*debtor*) shall and will from time to time, and at all times hereafter, during the time or period hereby limited for that purpose, use and employ his best endeavours to advance and promote the future increase and prosperity of his said trade, under and subject to the direction and advice of them the said (*inspectors*), and to collect and get in his said estate, property, debts, and effects, for the benefit of his said creditors, parties hereto, and from time to time, when and so often as any sum or sums of money shall be received by him, or come to his hands, sufficient to answer and pay the sum of shillings in the pound, upon or in respect of his said debts, shall and will pay and distribute the same unto and amongst them his said creditors, their respective executors, administrators, and assigns, partner and partners, rateably and in proportion to the amount of their respective debts [as set forth in the schedule thereof hereunder written] and in the meantime and until the same shall be so paid and distributed, shall and will, from time to time, place or deposit the same for safe custody in the hands of a banker or bankers, to be approved of by the said (*inspectors*), or otherwise dispose thereof in such manner as they or the major part of them

the said (*inspectors*) shall think fit and direct, subject only to the provisoes and agreements hereinafter contained respecting the same, that is to say, PROVIDED ALWAYS nevertheless, and it is hereby declared and agreed, that the said (*debtor*) shall or lawfully may, yearly and every year during so long as he shall observe and perform the covenants, agreements, and matters and things herein contained on his part to be performed and observed, be allowed to retain for his own use, out of the produce or proceeds of his said trade or business, the yearly sum of £ by even quarterly payments, for the subsistence of himself and family. PROVIDED ALSO that it shall be lawful for the said (*debtor*), with the consent of the said (*inspectors*), out of the monies which shall from time to time come to his hands after payment of all law charges and expenses, and salaries and allowances for clerks and others employed in the said trade, and the charges and expenses to be incurred in carrying on the same, and getting in and disposing of the proceeds thereof, in pursuance of these presents, to pay and fully satisfy in the first place all such and so many of the present creditors of him the said (*debtor*) whose debts do not exceed the sum of £20, or to pay that sum to such of them who will agree to accept thereof in full of their respective debts or demands. PROVIDED further, that in case any dividend shall be made of the estate and effects of the said (*debtor*) before all his said several creditors, by themselves, or their respective attorneys, shall have executed or otherwise acceded to these presents, it shall also be lawful for the said (*debtor*) with the assent of the said (*inspectors*) to retain the rateable dividends of every such creditor or creditors, and pay the same to him and them respectively upon his or their executing or acceding to these presents, and in default of any such dividend being so retained by him, shall or lawfully may pay to such creditor or creditors, upon his or their executing or acceding to these presents, a rateable dividend or dividends answerable to the amount of his or their respective debts, out of any future proceeds of his estate and effects, and before any further dividend or payment shall be made to or amongst any of his said creditors. AND the said (*debtor*) doth hereby for himself, his heirs, executors, and administrators, further covenant, promise, and declare with and to the said (*inspectors*) and all other his creditors, parties hereto, and to and with their respective partners, and each and every of them, their and each and every of their executors, administrators, and assigns, that

he the said (*debtor*), his executors or administrators, shall not nor will at any time hereafter, convey, alienate, dispose of, or in any manner charge or incumber, or cause or procure, or knowingly suffer to be conveyed, alienated, disposed of, or in any wise charged or incumbered, all or any part of the estate, property, or effects, whether real, personal, or mixed, of him the said (*debtor*) or any his present or future estate, right, title, interest, or expectancy therein or thereto, or in, or to any part thereof, other than and subject to such control as aforesaid, without the consent in writing of the said (*inspectors*) under their respective hands. And shall not nor will do or cause or procure, or knowingly permit or suffer to be done or committed any act, matter, or thing whatsoever, whereby any or either of the creditors of him the said (*debtor*) shall or may obtain or have any further or other security or securities for his, her, or their debt or debts, or other priority in respect thereof than that or those which they respectively have at the time of the sealing and delivery of these presents, or whereby any or either of his said creditors shall have or receive a greater advantage in or concerning his or their debt or debts, than the other or others of them, save only and except such of the said creditors whose debts do not respectively exceed, or who will accept of the sum of £20 in full thereof as aforesaid. And further, that he the said (*debtor*) until his said creditors shall be fully paid and satisfied their said respective debts and lawful demands, or agree to accept a part in satisfaction of the whole of the same, shall not nor will either alone or with any other person or persons whomsoever, undertake or become engaged in any new or other trade, concern, or business, nor enter into any speculative, dubious or uncertain contract or agreement whatsoever, nor contract any new or other debts, (save only in the due, regular, and unavoidable course of his present trade or business,) nor become bound, bail, or surety for any person or persons whomsoever, for or in respect of any debt or other matter or thing whatsoever, without the like consent and approbation of them the said (*inspectors*) aforesaid, first had and obtained for that purpose. And further, that he the said (*debtor*) shall and will from time to time, and at all times hereafter until his said debts shall be fully paid and satisfied, keep or cause to be kept proper books of account relating to his said trade, estate, and effects, and make or cause to be made therein true and proper entries of all receipts, payments, disburse-

ments, and other outgoings, and all other transactions, matters, and things whatsoever concerning the same, in such manner as is usual with persons in a like trade or business, or which shall be requisite or proper to explain or show at all times the state and condition of his said trade, estate, and effects in a clear and satisfactory manner, in all things. And also shall and will from time to time, and at all or any reasonable time and times, permit and suffer them the said (*inspectors*) and each and every or any of them, at their or his own free will and pleasure, to inspect and examine the said books of account, and all other books, papers, and writings in the custody or power of the said (*debtor*) relating to his said trade, estate, and effects, and to copy, or cause to be copied, or make or cause to be made extracts from the same, or any of them. And also shall and will at the end of every month, or oftener if required by the said (*inspectors*), or any or either of them, make and deliver to them or him, in writing under his hand, an abstract or general statement of the receipts and payments, and other transactions and proceedings relative to his said trade or business up to the end of the month then next preceding. And also shall and will, if thereunto required by them or any or either of them, verify the truth of such accounts and statement upon oath, before one of the masters of the High Court of Chancery, or any other person or persons competent to administer the same. And it is hereby further declared and agreed by and between all and every the parties hereto, that for accelerating the ends and purposes aforesaid, it shall be lawful for the said (*inspectors*), and they are hereby authorised and empowered to nominate and appoint one or more clerk or clerks, or other person or persons to assist the said (*debtor*) in the management of his said trade or business, at such salary or wages as they shall think proper, and also for them the said (*inspectors*) to do, order, direct, and assent to all and every, or any such other acts, matters, and things whatsoever, relative to the matters or things aforesaid, as they in their discretion shall at any time, and from time to time, hereafter think fit and expedient. And also that in case the said (*debtor*), or his estate or effects shall be arrested, taken in execution, or otherwise attached, by any or either of his said creditors, they the said (*inspectors*), or any or either of them may, and are and is hereby authorised and empowered to bail, or cause to be bailed, the said (*debtor*), and the said (*inspectors*) may contest or otherwise act con-

cerning the debt or debts of such creditor or creditors at the expense of the estate and effects of the said (*debtor*) as they shall think fit. And it is hereby further covenanted, agreed, and declared by and between the several parties hereto, that if by reason of any unforeseen cause, not wilfully occasioned by the said (*debtor*), any delay shall happen to take place in the final settlement of his affairs, so as to prevent the several creditors, parties hereto, from receiving the full amount of their respective debts, at or before the expiration of the said term of years, hereby limited for winding up the concerns of the said (*debtor*) and for payment of his creditors in manner aforesaid, then and in such case it shall be lawful for the said (*inspectors*), and they are hereby fully authorised and empowered, if they shall think proper, without any further consent of the others of the said creditors than is hereby given, to prolong or extend the said term or period for the further space of calendar months, to be computed from the expiration of the said term, and that thereupon and an indorsement under the hands of the said (*inspectors*) being made upon these presents to that effect, all and every the said creditors, parties hereto, their heirs, executors, partners, and assigns, shall and will continue and be bound by the covenants, provisoes, declarations and agreements herein contained in favour of him the said (*debtor*) in the same, or like and in as full and complete a manner for such further period of calendar months, to all intents and purposes, as if the said term of years, and months had been originally or primarily limited or appointed for that purpose. And the said (*debtor*) doth hereby in manner and form aforesaid further covenant, promise, and agree with and to the several parties hereto respectively, and their respective executors, administrators, partners, and assigns, that he the said (*debtor*), his heirs, executors, or administrators, shall and will well and truly pay or cause to be paid unto all and every of them the said creditors, parties hereto, their respective executors, administrators, partners, or assigns, or other person or persons by them respectively authorised to receive the same, their full and whole debts and demands at or before the expiration of the said term of years, or other the prolonged or extended period aforesaid, (if the same shall be granted,) in the manner and proportions hereinbefore appointed for payment thereof, and according to the true intent and meaning of these presents. And this Indenture fur-

THER WITNESSETH, that for and in consideration of the covenants, provisoes, and agreements herein contained, by and on the part of the said (*debtor*) to be observed and performed, it is hereby declared and agreed by and between all and every the several parties hereto, creditors of the said (*debtor*), and each of them, for himself, his heirs, executors, administrators, partners, and assigns, doth hereby covenant, promise, and agree with and to the said (*debtor*), his executors, administrators, and assigns, in the manner following, that is to say, that they the said several persons parties hereto, creditors of the said (*debtor*) and their respective heirs, executors, administrators, partners, and assigns, (each covenanting severally as hereinbefore mentioned), shall and will accept and receive their said respective debts and demands, so now due and owing to them respectively by the said (*debtor*) as aforesaid, in the way and manner, and at the times in and by these presents declared or expressed for the payment thereof. AND further, that in case they the said creditors shall not have received the whole of their respective debts, on or before the day of or such other prolonged or extended period as aforesaid (if granted), and the said (*debtor*) shall and do on such the said day of or other day or time last aforesaid, well and truly convey, assign, assure, and deliver up unto such person or persons as they the said creditors, or the major part or number of them, shall, at a meeting to be holden pursuant to days' previous notice in the London Gazette, name and appoint, all such parts of his estate and effects as shall then remain undivided or otherwise unapplied to the ends and purposes aforesaid, for the use and benefit of them the said creditors, in such manner as they the said creditors, or the major part of them, shall require, (he the said (*debtor*) having well and truly observed and performed all and every the covenants and agreements herein contained on his part to be performed and observed, except only with respect to the payment of his said debts within the period aforesaid), then and in such case the said creditors, parties hereto, their respective executors, administrators, partners, and assigns, shall and will thereupon duly execute and deliver unto the said (*debtor*), his executors, and administrators, legal, sufficient, and effectual releases and discharges of and from all debts and demands whatsoever, which are now due and owing to them the said creditors respectively, and deliver up all bonds, bills, notes, and other securities for the same.

whether of, from, or given by him the said (*debtor*), or by any surety or sureties of or for him, and of and from all accounts relative thereto, and all actions, suits, remedies, and means whatsoever, both at law and in equity, for recovering the same, or any part thereof. And further, that in case any commission of bankruptcy shall be awarded and prosecuted against the said (*debtor*), and prior to the issuing thereof, any dividends of his estate shall have been made in pursuance of these presents, then and in such case they the said creditors respectively, shall and will come in and be admitted and considered as creditors under the said commission for the residue only of their respective debts now due and owing to them respectively from the said (*debtor*), after deducting or retaining the sums which they shall respectively have received under these presents, upon their respective debts, and they the said creditors, parties hereto, shall and will give their respective consent to the allowance to the said (*debtor*) of the said allowance or sum of £ per annum, up to the time of the issuing such commission, and confirm and allow the several payments which the said (*debtor*) shall have made by virtue of these presents, to creditors whose debts and demands shall not exceed the sum of £20. or who shall agree to take that sum in full thereof, and also all such costs, charges, and expenses as aforesaid. Provided always nevertheless, and it is hereby declared and agreed to be the true intent and meaning of these presents, and of the parties hereto, that if the said (*debtor*) shall depart this life, or make default in performance or observance of any or either of the covenants, clauses, stipulations, or agreements hereinbefore contained on his part or behalf, to be observed or performed, or in case any of the creditors of the said (*debtor*) whose debts respectively amount to the sum of £ , (except only such of them, who being possessed of other securities, shall choose to rely thereon) shall not, by themselves, or their respective attorneys, duly execute or otherwise accede to these presents within the respective times next hereinafter mentioned, (that is to say) such of them as are residing in Great Britain within three calendar months; such of them as are residing in other parts of Europe, within six calendar months; and such of them, if any, who are residing in America, or elsewhere out of the confines of Europe, within twelve calendar months next after the day of the date hereof; then and in either of the said cases, this present indenture [and the licence

and liberty hereby given, and every other article, clause, matter, or any thing herein contained,] so far as the same respectively tend to restrain the said creditors from suing for, or recovering his, her, or their respective debts, within the time aforesaid, shall cease, determine, and be utterly void to all intents and purposes whatsoever, any thing herein contained or implied to the contrary thereof in any wise notwithstanding. PROVIDED ALWAYS, and it is hereby further declared and mutually agreed by and between all and every the parties hereto, that in case any or either of the said (*inspectors*) shall depart this life, or shall refuse or decline to act in the matters and things hereby delegated or entrusted to them or him as aforesaid, or shall go to reside beyond the seas, then and in every such case it shall be lawful for the major part in number of the creditors of the said (*debtor*) present at any meeting holden pursuant to days' previous notice in the London Gazette, to nominate and choose such other person or persons as they shall think fit to be an inspector or inspectors in the place and stead of such of the said inspector or inspectors as shall so die, or refuse, or decline to act, or go to reside abroad, and every such person so to be chosen aforesaid, shall have the like powers and authorities in all things, as the person or persons in whose room or place they or he shall have been chosen, had, or might have exercised under or by virtue of these presents, if living or continuing to act, or as if the name or names of such new inspector or inspectors had been inserted in these presents. AND it is hereby also agreed and declared by and between all the parties hereto, that each and every of the said (*inspectors*), and all and every other the inspector or inspectors for the time being, who may be appointed by virtue of these presents, shall be indemnified, protected, and saved harmless by or out of the estate and effects of the said (*debtor*) or by his said other creditors, against or in respect of all transactions and personal engagements, matters, and things whatsoever, which they shall lawfully or rightfully do, or cause to be done, or enter into, order or direct in or concerning the estate and effects of the said (*debtor*) by virtue or in pursuance of these presents, and that they the parties hereto of the third part, and every of them, their, and his heirs, executors, administrators, partners, and assigns, shall and will from time to time, and at all times, allow and confirm the same in all things: And further that every of them the said (*inspectors*), and other the inspector or inspectors for

the time being, to be appointed as aforesaid, shall be reimbursed and repaid out of and from the estate and effects of the said (*debtor*) or by other the said creditors, all such costs, charges, damages, and reasonable expenses whatsoever, as they, or any or either of them, shall respectively pay, sustain, or be put unto, in, about, or concerning the matters and things aforesaid, or in any wise relating thereto. And lastly, it is hereby declared and agreed, by and between all and every the parties hereto, that the opinion and direction of the major part of the persons who shall be inspectors of the concerns of the said (*debtor*) for the time being, under or by virtue of these presents, shall at all times be binding and conclusive upon him the said (*debtor*) relative to the management of his said trade and affairs, and also upon his said creditors, parties hereto, in like manner as if they the said (*inspectors*,) had all agreed and concurred therein.

In witness, &c.

In entering into an agreement for a composition with creditors, care must be taken by the debtor and his solicitor *not* to offer any collateral security, or hold out any exclusive advantages to any reluctant creditor, to induce him to execute the deed; as this will not only be inefficient with respect to the favoured party, but may also invalidate the assent of the other parties; as will also any false statement made to them respecting the debtor's affairs, or the favourable disposition of his creditors. And if the debtor be subject to the Bankrupt Laws, it should be ascertained whether, at the time of the execution of the deed, he have committed an act of bankruptcy; for if a creditor signs in ignorance of that circumstance, he will not be precluded from becoming a petitioning creditor under a commission, even although he may have previously received a dividend under the composition deed.

The particular amount of each creditor's debt should in general be specified in a deed of composition; for a creditor signing with the amount of his debt in blank, will be bound to the extent of all existing debts then owing to him by the debtor, although the deed have an express reference to those only which are specified in the schedule annexed.

Deeds of composition with creditors are exceptions to the general rule, that one copartner cannot bind his copartner by deed; but though it is done in this instance, executory agreements entered into by present copartners

will not be binding upon those who may thereafter succeed them, there being no transmission of rights or obligations from them to any new or succeeding partners.

A release to one of two *joint-debtors*, will operate as a legal discharge to both of them, unless countervailed by express declaration.

A deed of composition will be binding upon all parties acceding to it, *after accepting a dividend under it*, although they may not have signed the deed. And so also if creditors assent *verbally* only, if the debtor assign over his property for their benefit in consequence, the creditors are bound to abide by it.

Creditors have a right to retain their securities, notwithstanding a composition between them and the debtor, unless otherwise declared by deed, or they be paid in full; and it is competent for creditors signing a deed of composition between them and the principal debtor, and certain of his sureties, to reserve their remedies against other sureties, if not otherwise stipulated.

A creditor will not be excluded, although he should not come in until after a time specified. But a bill in equity may be exhibited, to compel the creditors who stand out to come in, or to renounce the benefit of the trust. And it is but reasonable, if a certain number of creditors agree to terms of postponement, on the faith of their co-creditors acceding to the same terms, that their signatures should be void on the refusal of the rest, as the subsequent proceedings of the outstanding creditors against the debtor might exhaust the whole of his means of payment, and the acceding creditors lose the whole of their debts.

Concise Form of a Conveyance of Freehold Premises to Trustees in Trust for Creditors.

THIS INDENTURE, of three parts, made the day of in the year of our Lord . BETWEEN (*the debtor*) of, &c. of the first part, (*the trustees*) of, &c. (creditors of the said (*debtor*) and also trustees named and appointed on behalf of themselves and other the creditors of the said (*debtor*) for the purposes hereinafter mentioned) of the second part, and the several other persons, creditors of the said (*debtor*) who by themselves or their respective attorneys have executed or shall hereafter execute or accede to these presents, of the third part. WHEREAS the said (*debtor*) is seised in his demesne as of fee of the message, lands, and here-

ditaments hereinafter described, and being indebted unto divers persons in various sums of money which he is at present unable to pay, hath agreed to convey and assure his said messuage, lands and hereditaments unto the said (*trustees*) in trust, by sale or other disposition thereof to pay the same, and for other the purposes hereinafter expressed. Now this Indenture witnesseth, that in pursuance of the said agreement, [and in consideration of the sum of 10*s*. of lawful money of England, to the said (*debtor*) in hand well and truly paid by the said (*trustees*) at or immediately before the sealing and delivery of these presents, (the receipt whereof is hereby acknowledged)] He the said (*debtor*) Hath granted, bargained, sold, aliened, and released, and by these presents Doth grant, bargain, sell, alien, release, and confirm, unto the said (*trustees*) and their heirs, All, &c. or howsoever otherwise the said messuage, lands, hereditaments, and premises, or any part thereof, now are or is, or heretofore were or was situated, tenanted, called, known, or described, [and also all other the messuages, lands, tenements, and hereditaments, if any, comprised in the indenture of bargain and sale for a year hereinafter referred to.] Together with all outhouses, buildings, yards, cellars, vaults, areas, ancient and other lights, ways, water-courses, trees, timber, and other trees, rights of common of every kind, and all and all manner of other rights, privileges, easements, advantages, and appurtenances whatsoever to the said hereditaments and premises, or any part thereof belonging, or therewith holden, used, occupied, or enjoyed, (All which said hereditaments and premises are now legally vested in the said (*trustees*) by virtue of a bargain and sale for a year to them thereof made by the said (*debtor*) for 5*s*. consideration, by indenture bearing date the day next before the day of the date of these presents, and by force of the statute made for transferring uses into possession) and the reversion and reversions, remainder and remainders, and rents, issues, and profits of the same premises, and all the estate, right, title, and interest whatsoever, of him the said (*debtor*) in, to, or concerning the same. Together with all deeds, muniments, writings, and evidences, which in any wise relate to the same premises, or to any part thereof, and now or hereafter being or to be in the possession or lawful power of the said (*debtor*), his heirs, executors, or administrators, or which he or they can or may procure without suit at law or in equity. To have and to hold

the messuage, lands, tenements, and hereditaments herein-before described, and all and singular other the premises by these presents granted and released, or otherwise assured, or intended so to be, with their and every of their appurtenances, unto the said (*trustees*) and their heirs, to the use and behoof of them the (*trustees*), their heirs, and assigns for ever, but nevertheless upon the trusts, and to and for the ends, intents, and purposes hereinafter declared, expressed, or referred unto concerning the same, that is to say, UPON TRUST, that they the said (*trustees*) and the [survivors or] survivor of them, or the heirs, executors, or administrators of such survivor, and their and his assigns, shall and do, as soon after the execution of these presents as they or he shall think it expedient, of their or his own proper authority, and without the concurrence of or any further power or authority from the said (*debtor*) or his heirs, than is herein contained, sell and dispose of, and convey and assure, either absolutely or by way of mortgage, in fee-simple, or for any term or number of years, and either together or in parcels, and in such way and manner as they or he shall think fit, ALL and singular or any part of the messuage, lands and hereditaments hereby granted and released, or otherwise assured or intended so to be, with their and every of their appurtenances, for such price or prices in money or other equivalent as they the said trustees or trustee shall deem reasonable; and receive and sign effectual receipts and discharges for the purchase-money, or other consideration, to be paid or given for the same; and it is hereby declared by the several parties hereto, that the person or persons paying or giving such money or consideration, and obtaining such receipt or discharge from the said trustees or trustee, or such one or more of them as shall be the only acting trustees or trustee for the time being, shall not afterward be liable to see to the application of the same, or answerable for the loss or misapplication thereof, or of any part thereof. AND it is hereby further agreed and declared by and between the several parties hereto, according to their respective interests, that they the said (*trustees*) and the [survivors or] survivor of them, and the heirs, executors, and administrators of such survivor, and their and his assigns, shall stand and be possessed of and interested in all and singular the sum and sums of money or other consideration to arise or be produced by any sale, mortgage, or other disposition which shall be made of the said hereditaments, or of any part

thereof, under or by virtue of these presents, and of and in the rents, issues, and profits thereof in the mean time, UPON THE TRUSTS, and to and for the ends, intents, and purposes "declared or expressed concerning the same, in or by a certain indenture already prepared and engrossed, and bearing or intended to bear even date with these presents and referring hereunto." AND the said (*debtor*) for himself, his heirs, executors, and administrators, doth hereby covenant and declare to and with the said (*trustees*) their heirs, and assigns in the manner following, (that is to say) that [for and notwithstanding any act, deed, matter or thing by him the said (*debtor*) [or any of his ancestors,] made, done, or knowingly suffered to the contrary (save as in or by these presents is recited or otherwise particularly mentioned)], he the said (*debtor*) at the time of the sealing and delivery of these presents is lawfully, rightfully, and absolutely seised in his demesne as of fee, in his own right, and to his own use, of all and singular the hereditaments and premises hereinbefore granted and released, or otherwise assured, or intended so to be, with their and every of their appurtenances, as of, in, and for a good and indefeasible estate of inheritance in fee-simple in possession without there being any manner of trust, condition, qualification, matter, or thing whatsoever, to impeach, make void, incumber, or prejudicially affect the same in any wise howsoever, save as appears by these presents. [AND also now hath in himself full power, and lawful right and authority by these presents to release and assure* the same hereditaments and premises, and the reversion and inheritance thereof, unto and to the use of the said (*trustees*) and their heirs, upon the trusts in the manner, and for the ends and purposes hereinbefore declared, expressed, or referred unto,] concerning the same.] AND that all and singular the same hereditaments and premises, and the rents, issues, and profits thereof, shall or lawfully may be respectively had, holden, received and applied, according to the true intent and meaning of these presents, without any hinderance, interruption, claim, or demand whatso-

* ... part of the premises be copyhold, say, ... and singular the said freehold hereditaments and premises, ... surrender and assure all and singular the said copyhold or cus... ...ments and premises hereinbefore agreed or covenanted ... their respective appurtenances, to the use ... manner," &c. *as*

ever, from or by him the said (*debtor*), or any person or persons whomsoever, now or hereafter claiming or entitled by, from, or under him or them, or his or their acts, means, or defaults, save only as aforesaid. And that free and clear, and absolutely acquitted, exonerated, and discharged of and from all former and other grants, releases, conveyances, assurances, estates, rights, titles, interests, charges, and incumbrances whatsoever, by him or them, or his or their acts, means, or defaults, made, done, or knowingly occasioned or suffered, save only and except as hereinbefore is recited or mentioned. And further, that he the said (*debtor*), and all other persons so claiming or entitled as lastly aforesaid, shall and will from time to time, and at all times hereafter, upon every reasonable request of the said (*trustees*), their heirs or assigns, make, do, acknowledge, levy, suffer, and execute, all such further and other lawful and reasonable acts, deeds, matters, and things whatsoever, as well for the better, more perfectly, or satisfactorily granting, assuring, and confirming the hereditaments and premises hereinbefore described, and intended to be hereby released, or any part thereof, unto the said (*trustees*) and their heirs,* upon and for the trusts, intents, and purposes hereinbefore expressed, or intended, concerning the same, as for conveying or otherwise assuring the same hereditaments and premises, or any part thereof, unto or for any [purchaser or purchasers, mortgagee or mortgagees, or other] person or persons whomsoever, his or their heirs, executors, administrators, and assigns, in such manner and form as they the said (*trustees*), or the survivor of them, or the heirs of such survivor, or their or his assigns, or any such other person or persons as aforesaid, their or any or either of their counsel in the law shall reasonably require or advise. In witness, &c.

* If part of the premises be copyhold, add,
"And for the better and more effectually surrendering and assuring all and singular the said copyhold or customary lands and hereditaments hereinbefore covenanted or agreed to be surrendered, to the use of the said (*trustees*), their heirs, and assigns, upon," &c. [illegible]

GROUNDS AND CAUSES FOR ACTIONS IN DEBT.

Of Detinue;—of Trover and Conversion.

The action of *detinue* lies for the recovery of goods and chattels lent and delivered to a man to keep, or to deliver to another person, who refuses to deliver them, and detains them in custody.

It lies also for any thing certain and valuable, wherein one may have a right of property; as, for cattle, cloth, household goods, plate, jewels, bags of money sealed, or chests of money locked, stacks of corn, loads of wood, &c. but not for money out of a bag, or corn out of a sack; because they cannot be distinguished from another man's corn or money.

The thing detained must be once in the possession of the defendant; which is not to be altered by act of law, as seizure in execution, &c.: and the nature of the thing must continue without alteration to entitle to this action; so that if leather be made into shoes, or timber be used in building, this action will not lie. In case of delivery of goods, if a person to whom a thing is delivered die, an action of detinue may be brought against his executors, or against any person to whom the same comes; as, if things be delivered to be kept, whether by the party, or his father, ancestor, &c. he may bring this action, if detained.

If one lend me a horse, or such like thing, he must have the very thing restored, or an action of detinue lies against me; though, where goods are delivered by way of loan, as if one lend another money, corn, or the like, he cannot expect the same thing again, but the same in specie and quantity. Grantees of goods, and persons to whom they are to be delivered over, &c. shall have action of detinue: and if a man bargain and sell goods, upon condition to be void on payment of money at a day, if he pay it, he may have an action of detinue for the goods.

A general action of detinue lies against any one that finds a man's goods; though if I deliver any thing to a person to re-deliver to me, and he lose it, and another find the thing and deliver it to one who has a right to the same, no action will lie against me. But where any goods

are delivered to a man, and he delivers them to another, this action will be had against the second person; and if he deliver the goods to a party having no right thereto, he is answerable.

If a person receive goods of me for my use, I may take my goods again without request; or if they be left or delivered to deliver to another man, before they are delivered I may countermand the authority, and require the goods again; and may bring an action, or take the goods where I find them.

In this action of detinue, it is necessary to ascertain the thing detained, in such a manner as that it may be specifically known and recovered. In order, therefore, to ground an action of detinue, which is only for the detaining, these points are necessary: 1. That the defendant came lawfully into possession of the goods, as either by delivery to him, or finding them; 2. That the plaintiff have a property; 3. That the goods themselves be of some value; and, 4. That they be ascertained in point of identity. Upon this the jury, if they find for the plaintiff, assess the respective values of the several parcels detained, and also damages for the detention. And the judgment is conditional, that the plaintiff recover the said goods, or (if they cannot be had) their respective values, and also the damages for detaining them.

But there is one disadvantage which attends this action, *viz.* that the defendant is herein permitted to wage his law, that is, to exculpate himself by oath, and thereby defeat the plaintiff of his remedy; which privilege is grounded on the confidence originally reposed in the bailee by the bailor, in the borrower by the lender, and the like, from whence arose a strong presumptive evidence, that, in the plaintiff's own opinion, the defendant was worthy of credit. And for this reason the action itself is almost disused, and has given place to the action of trover, in which such difficulty does not occur.

The action of *trover and conversion* is a special action of the case, and lies against a man, who, having found goods, refuses to deliver them to the owner: or, if any one have in his possession goods delivered to him, and he uses or sells them without the owner's consent, this is a conversion for which an action of trover may be brought; and also, if he do not actually convert them, but refuses to deliver them up, though he keeps them in his possession.

An action of trover also may be brought for goods detained; for the party shall have his goods delivered, if

they may be had, or damages to the value for the detaining and conversion of them. After the goods are demanded, if the person having them refuses the delivery thereof, this action lies; and a denial to deliver is a conversion in law: also trespass or trover lies for the same thing; and the alleging the conversion of the goods in trespass, is to aggravate damages. If where a bond, &c. is detained, the money be received thereon, action of account lies against the receiver.

For any live goods, or things inanimate, an action of trover will lie; and a plaintiff may choose to have his action of trover against the first finder of the goods, or any other who gets them afterwards. And an executor may bring an action of trover for the goods of the testator. If, either by finding or delivery of goods, the defendant have a lawful possession, there must be a demand and refusal to make the conversion; but if the possession were tortuous, as if the defendant take away my hat, &c. the very taking is a sufficient proof of a conversion, without any thing further.

This action also lies for goods, although they come into the possession of the plaintiff before the action brought, which does not satisfy for the detainer, or purge the wrong. In case a person take the horse of another, and ride him, and then deliver the same to the party, he may, notwithstanding, have his action, it being a conversion, and re-delivery is no bar. But where a defendant generally tenders the goods, if the plaintiff refuse to receive them, that will go in mitigation of damages.

If a man find goods, he ought not to abuse or use them; for therein lies the offence to found this action, the point of which is the conversion. In this case, the party finding is to deliver them on demand, &c. though he may answer that he knows not whether the plaintiff is the true owner. But where goods lost are found in the hands of another, if he bought them in open fair or market, this alters the property, and the plaintiff cannot recover them from him.

In action of trover, if a conversion can be proved, then proof is to be had of a demand made of the thing before the action brought, and that it was not delivered; and the property of the plaintiff must be proved before the goods came to the defendant's hands.

The fact of the finding, or trover, is immaterial: for the plaintiff needs only to suggest (as words of form) that he lost such goods, and that the defendant found them;

and if he prove that the goods are his property, and that the defendant had them in his possession, it is sufficient. But a conversion must be fully proved: and then in this action the plaintiff shall recover damages equal to the value of the thing converted, but not the thing itself; which nothing will recover but an action of detinue or replevin.

OF TRESPASS.

Trespass, in its largest and most extensive sense, signifies any transgression or offence against the law of nature, of society, or of the country in which we live; whether it relate to a man's person or his property. Therefore, beating another is a trespass, for which an action of trespass *vi et armis* in assault and battery will lie; taking or detaining a man's goods are respectively trespasses, for which an action of trespass *vi et armis*, or on the case in trover and conversion, is given by the law; so also non-performance of promises or undertakings is a trespass, upon which an action of trespass on the case in *assumpsit* is grounded; and, in general, any misfeasance, or act of one man whereby another is injuriously treated or damnified, is a transgression or trespass in its largest sense, for which an action of trespass *vi et armis* will lie: but if the injury be only consequential, a special action of trespass on the case may be brought.

The distinctions between actions of trespass *vi et armis* for an immediate injury, and actions of trespass on the case for a consequential damage, are frequently very delicate.

In a case where an action of trespass *vi et armis* was brought against the defendant for throwing a lighted squib in a public market, which fell upon a stall; the owner of which, to defend himself and his goods, took it up, and threw it to another part of the market, where it struck the plaintiff, and put out his eye; the question was much discussed, whether the person injured ought to have brought an action of trespass *vi et armis*, or an action upon the case; and one of the four judges strenuously contended that it ought to have been an action upon the case. But the question was more properly this, *viz.* Whether

an action of trespass *vi et armis* lay against the original or the intermediate thrower; or whether the act of the second thrower was involuntary (which seems to have been the opinion of the jury), or wilful and mischievous; and if so, whether he alone ought to have been answerable for the consequences.

In the case of Leame *v.* Bray it was decided, that if one man drive a carriage, being on the wrong side of the road, against another carriage, though unintentionally, the action ought to be trespass *vi et armis;* and the Court declared generally, that if the injurious act be the immediate result of the force originally applied by the defendant, and the plaintiff be injured by it, it is the subject of an action of trespass *vi et armis*, by all the cases both ancient and modern.

Every unwarrantable entry on another man's land by breaking his close, is a trespass. For every man's land is, in the eye of the law, inclosed and set apart from his neighbour's; and that either by a visible and material fence, as one field is divided from another by a hedge; or by an ideal invisible boundary, existing only in the contemplation of law, as when one man's land adjoins to another's in the same field. And every such entry or breach of a man's close carries necessarily along with it some damage or other.

One must have a property (either absolute or temporary) in the soil, and actual possession by entry, to be able to maintain an action of trespass; or at least, it is requisite that the party have a lease and possession of the vesture and herbage of the land. Thus, if a meadow be divided annually among the parishioners by lot, then, after each person's several portion is allotted, they may be respectively capable of maintaining an action for the breach of their several closes; for they have an exclusive interest and freehold therein for the time.

But, before entry and actual possession, one cannot maintain an action of trespass, though he have the freehold in law. And therefore an heir before entry cannot have this action against an abator; though a disseisee might have it against the disseisor, for the injury done by the disseisin itself, at which time the plaintiff was seised of the land; but he cannot have it for any act done after the disseisin, until he hath gained possession by re-entry, and then he may well maintain it for the intermediate damage done.

By the 6 Anne, c. 18, if a guardian or trustee for any infant, a husband seised *jure uxoris*, or a person having

any estate or interest determinable upon a life or lives, shall, after the determination of their respective interests, hold over and continue in possession of the lands or tenements, without the consent of the person entitled thereto, they are adjudged to be trespassers; and any reversioner or remainder-man, expectant on any life-estate, may once in every year, by motion to the Court of Chancery, procure the *cestuy que vie* to be produced by the tenant of the land, or may enter thereon in case of his refusal or wilful neglect.

And by the 4 Geo. II. c. 28, and 11 Geo. II. c. 19, in case, after the determination of any term of life, lives, or years, any person shall wilfully hold over the same, the lessor or reversioner is entitled to recover by action of debt, either at the rate of double the annual value of the premises, in case he himself hath demanded and given notice in writing to the tenant, to deliver the possession; or else double the usual rent, in case the notice of quitting proceeds from the tenant himself, having power to determine his lease, and he afterwards neglect to carry that notice into execution.

A man is answerable for not only his own trespass, but that of his cattle also; for if, by his negligent keeping, they stray upon the land of another, and they there tread down his neighbour's herbage, and spoil his corn or his trees, this is a trespass for which the owner must answer in damages. And the law gives the party injured a double remedy in this case; by permitting him to distrain the cattle thus *damage feasant*, or doing damage, till the owner shall make him satisfaction; or else by leaving him to the common remedy by action.

In some cases trespass is justifiable; as, if a man come on another's land or house to demand or pay money, there payable; or to execute, in a legal manner, the process of the law.

Also, a man may justify entering into an inn or public house, without the leave of the owner first specially asked; because when a man professes the keeping such inn or public house, he thereby gives a general licence to any person to enter his doors. A landlord may justify entering to distrain for rent; a commoner, to attend his cattle commoning on another's land; and a reversioner, to see if any waste be committed on the estate.

Also it hath been said that by the common law and custom of England, the poor are allowed to enter and glean upon another's ground after the harvest, without being guilty of trespass. But two actions of trespass have been

brought in the Common Pleas against gleaners, with an intent to try the general question, whether such a right existed: in the first, the defendant pleaded, that he, being a poor, necessitous, and indigent person, entered the plaintiff's close to glean; in the second, the defendant's plea was as before, with the addition that he was an inhabitant legally settled within the parish: to the plea in each case there was a general demurrer. Mr. Justice Gould delivered a learned judgment in favour of gleaning; but the other three judges were clearly of opinion that this claim had no foundation in law; that the only authority to support it was an extra-judicial dictum of Lord Hale; that it was a practice incompatible with the exclusive enjoyment of property, and was productive of vagrancy and many mischievous consequences.*

In like manner, the common law warrants the hunting of ravenous beasts of prey, as badgers and foxes, in another man's land; and it has been determined, that it is lawful to follow a fox with horses and hounds over another's grounds, provided no more damage is done than is necessary for the destruction of the animal.

But in cases where a man misdemeans himself, or makes an ill use of the authority with which the law entrusts him, he shall be accounted a tresspasser *ab initio;* as, if one come into a tavern, and will not go out in a reasonable time, but tarries there all night, contrary to the inclinations of the owner; this wrongful act shall affect and have relation back even to his first entry, and make the whole a trespass.

But a mere non-feasance, as not paying for the wine he calls for, will not make him a trespasser; for this is only a breach of contract, for which the taverner shall have an action of debt or *assumpsit* against him.

So if a landlord distrained for rent, and wilfully killed the distress, this by the common law made him a trespasser *ab initio;* and so indeed would any other irregularity have done, till the 11 Geo. II. c. 19, which enacts, that no subsequent irregularity of the landlord shall make his first entry a trespass; but the party injured shall have a specific action of trespass, or on the case, for the real special injury sustained, unless tender of amends hath been made. But still if a reversioner, who enters on pretence of seeing waste, break the house, or stay there all night; or if the commoner, who comes to tend his cattle, cut down a tree;

* The *law* is, therefore, as now laid down, in opposition to unlicensed gleaning, and the leave of the farmer must be obtained to legalise it.

in these and similar cases, the law judges that he entered for this unlawful purpose, and therefore, as the act which demonstrates such his purpose is a trespass, he shall be deemed a trespasser *ab initio.*

So also, in the case of hunting the fox or the badger, a man cannot justify breaking the soil, and digging him out of the earth; for though the law warrants the hunting of such noxious animals for the public good, yet it is held that such things must be done in an ordinary and usual manner; therefore as there is an ordinary course to kill them, *viz.* by hunting, the Court held that the digging for them was unlawful.

In order to prevent trifling and vexatious actions of trespass, as well as other personal actions, it is enacted by the 40 Eliz. c. 6, and 22 & 23 Chas. II. c. 9, sec. 136, that where the jury who try an action of trespass give less damages than forty shillings, the plaintiff shall be allowed no more costs than damages; unless the judge shall certify under his hand, that the freehold or title of the land came chiefly in question. But this rule now admits of two exceptions more, which have been made by subsequent statutes. One is by the 8 & 9 Wm. III. c. 11, which enacts, that in all actions of trespass, wherein it shall appear that the trespass was wilful and malicious, and it be so certified by the judge, the plaintiff shall recover full costs. The other exception is by the 4 & 5 Wm. & Mary, c. 23, which gives full costs against any inferior tradesman, apprentice, or other dissolute person, who is convicted of a trespass in hawking, hunting, fishing, or fowling upon another's land. Upon this statute, it has been adjudged, that if a person be an inferior tradesman, as a clothier for instance, it matters not what qualification he may have in point of estate; but if he is guilty of such trespass, he shall be liable to pay full costs. The persons described in the 4 & 5 Wm. & Mary, c. 23, are subject to pay full costs, though the damages are under 40*s.* without any certificate from the judge, or previous notice of the party. The words *inferior tradesman* are so vague, that the Court of Common Pleas were divided in opinion, whether a person who was a surgeon and apothecary came under that description.

It has been decided that a gentleman's huntsman is not a dissolute person under this Act. And where the plaintiff states the defendant in his declaration to be a dissolute person, or other person mentioned in the Act, if he should not prove him so at the trial, still he may recover a verdict, as in a common action of trespass.

OF NUISANCES.

We come now to the subject of Nuisances. A nuisance signifies any thing that worketh hurt, inconvenience, or damage. Nuisances are of two kinds, *public* or *common*, which affect the public, and are an annoyance to all the king's subjects; and *private*, which may be defined, any thing done to the hurt or annoyance of the lands, tenements, or hereditaments of another.

With regard to such nuisances as are of a *public* nature, and therefore indictable, they will fall under another division of our work. At present we shall consider the latter description of nuisances.

If a man build a house so near to mine that his roof overhangs my roof, and throws the water off his roof upon mine; this is a nuisance for which an action will lie. Likewise, to erect a house or other building so near to mine, that it obstructs my ancient lights and windows, is a nuisance. But in this latter case, it is necessary that the windows be ancient, that is, have subsisted there a long time without interruption; otherwise there is no injury done. For he hath as much right to build a new edifice upon his ground as I have upon mine; since every man may erect what he pleases upon the upright or perpendicular of his own soil, so as not to prejudice what has long been enjoyed by another; and it was my folly to build so near another's ground.

Also, if a person keep his hogs, or other noisome animals, so near the house of another, that the stench of them incommodes him, and makes the air unwholesome; this is an injurious nuisance, as it tends to deprive him of the use and benefit of his house.

A like injury is, if one's neighbour set up and exercise any offensive trade, as a tanner's, a tallow-chandler's, or the like; for though these are lawful and necessary trades, yet they should be exercised in remote places; this, therefore, is an actionable nuisance. So that the nuisances which affect a man's dwelling may be reduced to these three: 1. Overhanging it; 2. Stopping ancient lights; and 3. Corrupting the air with noisome smells.

So also it will be a nuisance, if life be made uncomfortable by the apprehension of danger; it has therefore been

held to be a nuisance, and a misdemeanor, to keep great quantities of gunpowder near dwelling-houses.

But depriving one of a mere matter of pleasure, as of a fine prospect, by building a wall, or the like; this, as it abridges nothing really convenient or necessary, is no injury to the sufferer, and is therefore not an actionable nuisance.

As to nuisance to one's lands: if one erect a smelting-house for lead so near the land of another, that the vapour and smoke kills his corn and grass, and damages his cattle therein, this is held to be a nuisance. And by consequence it follows, that if one do any other act, in itself lawful, which yet being done in that place necessarily tends to the damage of another's property, it is a nuisance; for it is incumbent on him to find some other place to do that act, where it will be less offensive. So also, if my neighbour ought to scour a ditch, and do not, whereby my land is overflowed, this is an actionable nuisance.

It is a nuisance to stop or divert water that uses to run to another's meadow or mill; to corrupt or poison a water-course, by erecting a dye-house or a lime-pit, for the use of trade, in the upper part of the stream; or, in short, to do any act therein, that in its consequence must necessarily tend to the prejudice of one's neighbour.

Also, if I have a way annexed to my estate across another's land, and he obstructs me in the use of it, either by totally stopping it, or putting logs across it, or ploughing over it, it is a nuisance; for, in the first case, I cannot enjoy my right at all; and, in the latter, I cannot enjoy it so commodiously as I ought.

Also, if I am entitled to hold a fair or market, and another person sets up a fair or market so near mine that he does me a prejudice, it is a nuisance to the freehold which I have in my market or fair. But in order to make this out to be a nuisance, it is necessary: 1. That my market or fair be the elder, otherwise the nuisance lies at my own door; 2. That the market be erected within the third part of twenty miles from mine; so that if the new market be not within seven miles of the old one, it is no nuisance; for it is held reasonable that every man should have a market within one third of a day's journey from his own home; that, the day being divided into three parts, he may spend one part in going, another in returning, and a third in transacting his necessary business there.

If such market or fair be on the same day with mine, it is *primâ facie* a nuisance to mine, and there needs no proof

of it, but the law will intend it to be so: but if it be on any other day, it *may* be a nuisance; though whether it *is* so or not, cannot be intended or presumed, but I must make proof of it to the jury.

If a ferry be erected on a river so near another ancient ferry as to draw away its custom, it is a nuisance to the owner of the old one. For where there is a ferry by prescription, the owner is bound to keep it always in repair and readiness; it would be therefore extremely hard, if a new ferry were suffered to share his profits, which does not also share his burthen.

We are next to consider the remedies the law has provided against nuisances. And first, no action will lie for a public or common nuisance, but an *indictment* only; and no person, natural or corporate, can have an action for a public nuisance, or punish it. Yet this rule admits of one exception,—where a private person suffers some extraordinary damage, beyond the rest of the king's subjects, by a public nuisance; in which case he shall have a private satisfaction by action. As if, by means of a ditch dug across a public way, which is a common nuisance, a man or his horse suffer any injury by falling therein; there, for this particular damage, which is not common to others, the party shall have his action.

Also, if a man have of his own accord, abated or removed a nuisance, he is entitled to no action. For he had choice of two remedies; either without suit, by abating it himself by his own act, or by suit, in which he may both recover damages, and remove it by the aid of the law; but having made his election of one remedy, he is totally precluded from the other.

The remedy by suit is principally by an action on the case for damages; in which the party injured shall only recover a satisfaction for the injury sustained, but cannot thereby remove the nuisance. But every continuance of a nuisance is held to be a fresh one; and therefore a fresh action will lie.

By 1 & 2 Geo. IV. c. 41, which recites that great inconvenience has arisen from the improper construction as well as negligent use of furnaces employed in the working of engines by steam, and whereas by law every such nuisance, being of a public nature, is abateable as such by indictment, but the expense attending the prosecution has deterred parties suffering thereby from seeking the remedy given by law, it is enacted, that it shall and may be lawful for the Court, in case of conviction on any such

indictment, to award such costs as shall be deemed proper and reasonable to the prosecutor, to be paid by the party convicted.

And if it shall appear that the grievance may be remedied by altering the construction of the furnace, it shall be lawful to the Court, without the consent of the prosecutor, to make such order as shall be thought expedient for preventing the nuisance in future, before passing final sentence upon the defendant or defendants so convicted.

These provisions not to extend to any furnaces of steam engines erected solely for the purpose of working mines, or employed solely in the smelting of ores and minerals, or in the manufacturing of the produce of such ores or minerals on or immediately adjoining the premises where they are raised.

OF DEBTS, COVENANTS, AND PROMISES.

We shall next consider the injuries, and their remedies, which happen against those rights of property that are founded upon and arise from contracts, either express or implied. These include three distinct species; debts, covenants, and promises.

1. The legal acceptation of *debt* is, a sum of money due by certain and express agreement; as by a bond for a determinate sum, a bill or note, a special bargain, or a rent reserved on a lease; where the quantity is fixed and specific, and does not depend upon any subsequent valuation to settle it. The non-payment of these is an injury, for which the proper remedy is by action of debt, to compel the performance of the contract, and recover the specific sum due. So also, if I verbally agree to pay a man a certain price for a certain parcel of goods, and fail in the performance, an action of debt lies against me; for this is also a determinate contract; but if I agree for no settled price, I am not liable to an action of debt, but a special action on the case, according to the nature of my contract. And, indeed, actions of debt are now seldom brought but upon special contracts under seal wherein the sum due is clearly and precisely expressed; for, in case of such an action upon a simple contract, the

plaintiff labours under two difficulties. First, the defendant has here the same advantage as in an action of detinue, that of waging his law, or purging himself of the debt by oath, if he think proper. Secondly, in an action of debt the plaintiff must prove the whole debt he claims, or recover nothing at all. For the debt is one single cause of action, fixed and determined; and which, therefore, if the proof vary from the claim, cannot be looked upon as the same contract whereof the performance is sued for. If, therefore, I bring an action of debt for £30, I am not at liberty to prove a debt of £20, and recover a verdict thereon; any more than if I bring an action of detinue for a horse, I can thereby recover an ox: for I fail in the proof of that contract, which my action or complaint has alleged to be specific, express, and determinate.*

But in an action on the case, or what is called an *indebitatus assumpsit*, which is not brought to compel a specific performance of the contract, but to recover damages for its non-performance, the implied *assumpsit*, and consequently the damages for the breach of it, are in their nature indeterminate, and will therefore adapt and proportion themselves to the truth of the case which shall be proved, without being confined to the precise demand stated in the declaration. For if any debt be proved, however less than the sum demanded, the law will raise a promise *pro tanto*, and the damages will of course be proportioned to the actual debt. So that I may declare that the defendant being indebted to me £30 undertook or promised to pay it, but failed; and lay my damages arising from such failure at what sum I please: and the jury will, according to the nature of my proof, allow either the whole in damages, or any inferior sum. And even in actions of debt, where the contract is proved and admitted, if the defendant can shew that he has discharged any part of it, the plaintiff shall recover the residue.

2. A *covenant* also, contained in a deed, to do a direct act, or to omit one, is another species of express contracts, the breach of which is a civil injury. As, if a man covenant to be at York by such a day, or not to exercise a

* These obsolete quibbles are fast leaving the Courts; and it is now determined, that in an action for debt upon a simple contract, the plaintiff may recover a less sum than is stated in his writ or declaration, 1 Hen. Bl. 249; 2 Bl. Rep. 1221. Still, however, the easiest and best course ought to be pursued; and therefore the action of assumpsit, which adapts itself to all circumstances, is generally to be preferred.

trade in a particular place, and is not at York at the time appointed, or carries on his trade in the place forbidden, these are direct breaches of his covenant. The remedy for this is by a writ of covenant; which directs the sheriff to command the defendant, generally, to keep his covenant with the plaintiff (without specifying the nature of the covenant) or shew good cause to the contrary: and if he continue refractory, or the covenant is already so broken that it cannot now be specifically performed, then the subsequent proceedings set forth with precision the covenant, the breach, and the loss which has happened thereby: whereupon the jury will give damages in proportion to the injury sustained by the plaintiff.

A covenant must be to do what is lawful and possible, or it will not be binding; and in such case, where there is any agreement under hand and seal, action of covenant may be brought on it: and if one is party to a deed, his agreement to pay amounts to a covenant.

Upon a bond action of covenant lies, it proving an agreement: and if a person covenant to pay another a certain sum of money at a day, though he may bring action of debt for it, yet may writ of covenant be had at his election; but when only a hand is to a writing, and not a seal, this action will not lie, but an action of the case upon breach of the agreement.

If a man covenant with one to pay him money on a time to come, and then covenantee die before the day, his executors or administrators shall have an action of covenant for the money, and recover the same: also, in every case where a testator is bound by a covenant, the executor shall be liable, if it be not determined by the testator's death. Not only parties to deeds, but their executors and administrators, may take advantage of covenants: but there may be an agreement and covenant only to be performed by the parties themselves.

In deeds and articles of covenant, sometimes a clause for performance, with a penalty, is inserted; and at other times, and more frequently, bonds are given for the performance, with a sufficient penalty, separate from the deed: which last being sued, the jury must find the penalty; but on covenant the damages only. And commonly the party damnified in this action can recover nothing but damages for the breach; except in real actions.

Where it is agreed that one man shall pay £100 to another for lands in such a place, this is a mutual real covenant, and action of covenant lies, if the other party refuse

to convey, &c. And when covenants are distinct and mutual, several actions may be brought against the parties: but if there be mutual covenants, and the one not to be performed before a covenant precedent, there the covenant is not sueable till the first is performed.

If a person covenant expressly to repair a house, and it be burnt down by lightning or any other accident, yet he ought to repair it, or action of covenant lies against him; for it was in his power to have guarded against it in his contract, by exception, &c.; though a tenant is not so bound by covenant in law. But where the use of a thing is demised, and it runs to decay, so that the lessee or tenant cannot have the benefit of it; for this no action of covenant lies for the lessee; and if the lease, &c. be not good, there can be no covenant, or any breach.

If a man make a lease of lands for years, and then turn out the lessee, he shall have covenant against the lessor, though there be no express covenant in the deed: but in case a stranger enter before such lessee, the lessee shall not have an action of covenant upon this ouster, because he was never a lessee in privity to have the action: yet a stranger to the deed may not take advantage of a covenant.

A covenant for the lessee to enjoy against all men extends not to tortuous acts and entries, &c. for which the lessee hath his proper remedy against the aggressors. If a person covenant in a deed, that he hath a good right to grant, &c. and he have no right, it is a breach of covenant, for which action of covenant lies: and where a man by his own act disables himself to perform a covenant, it is a breach thereof; and no duty or cause of action arises upon any covenant, till it be broken.

On covenants in general, if the plaintiff have judgment in an action for one breach, and afterwards the covenantor break his covenant again, a new action may be brought; and so for every breach; or in covenants perpetual, upon a new breach, a *scire facias* may be had on the former judgment, and the plaintiff need not bring any new writ of covenant.

3. A *promise* may be considered as a verbal covenant, and wants nothing but the solemnity of writing and sealing to make it absolutely the same. If, therefore, it be to do any explicit act, it is an express contract, as much as any covenant; and the breach of it is an equal injury. The remedy indeed is not exactly the same; since, instead of an action of covenant, there only lies an action upon the case for what is called the *assumpsit*, or undertaking

of the defendant, the failure of performing which is the wrong or injury done to the plaintiff, the damages whereof a jury are to estimate and settle. As, if a builder promise, undertake, or assume to build and cover a house within a time limited, and fail to do it; an action on the case will lie against the builder for this breach of his express promise, undertaking, or *assumpsit*. So also in the case before-mentioned, of a debt by simple contract, if the debtor promise to pay it, and do not, this breach of promise entitles the creditor to his action on the case, instead of being driven to an action of debt. Thus likewise a promissory note, or note of hand not under seal, to pay money at a day certain, is an express *assumpsit:* and the payee at common law, and by custom and act of parliament the indorsee, may recover the value of the note in damages, if it remain unpaid.

Some agreements, indeed, though never so expressly made, are deemed of so important a nature, that they ought not to rest on verbal promise only, which cannot be proved but by the memory (which sometimes will induce the perjury) of witnesses. To prevent which, the Statutes of Frauds and Perjuries (29 Chas. II. c. 3,) enacts, that in the five following cases no verbal promise shall be sufficient to ground an action upon, but at the least some note or memorandum of it shall be made in writing, and signed by the party to be charged therewith; —1. Where an executor or administrator promises to answer damages out of his own estate. 2. Where a man undertakes to answer for the debt, default, or miscarriage of another. 3. Where any agreement is made upon consideration of marriage. 4. Where any contract or sale is made of lands, tenements, hereditaments, or any interest therein. 5. And, lastly, where there is any agreement that is not to be performed within a year from the making thereof. In all these cases a mere verbal *assumpsit* is void.

These provisions in the statute have produced many decisions, both in the courts of law and equity.

It is determined, that if two persons go to a shop, and one orders goods, and the other says, "If he do not pay, I will;" or, "I will see you paid," he is not bound, unless his engagement is reduced into writing. In all such cases the question is, Who is the buyer? or to whom is the credit given? and who is the surety? and that question, from all the circumstances, must be ascertained by the jury; for if the person for whose use the goods are furnished be liable at all, any promise by a third person to discharge

the debt must be in writing, otherwise it is void; and, in ascertaining the fact, whether the party promising intended only to come in aid of the liability of the person on whose account he promised, or to become himself immediately reponsible, the Court will not only pay attention to the expression used, but to the particular situation, circumstances, and general responsibility of the party promising.

The principal point in cases of this kind is, whether, or not, the party who is to be benefited by the promise is liable at all. If there is no liability, there is nothing to which the promise can be collateral, or in relation to which it can be regarded as an undertaking to answer for the debt, default, or miscarriage of another person. It must, therefore, without such liability in a third person, be an original undertaking in the party promising, and will subject him to the payment; the case being out of the Statute of Frauds altogether, and of course no written evidence of the promise is necessary.

The distinction between the collateral and the original promise is exemplified by Lord Chief Justice Holt, in the case of Watkin *v.* Perkins. If, says his lordship, A. promise B., being a surgeon, that if he will cure D. of a wound, he will see him paid; this is only a promise to pay if D. do not, and therefore it ought to be in writing, to be within the Statute of Frauds. But if A. promise in such a case, that he will be B.'s paymaster, whatever he shall deserve, it is immediately the debt of A., and he is liable without writing. In the case first put, it is clear that B. will have a double remedy; in the second, the credit would be considered wholly given to the express promiser. And even if by subsequent circumstances D. should render himself liable, such liability, not having existed or come into existence at the time of the promise, would not have any effect in varying the predicament of the first promiser, whose promise would still be good without writing. Again, if A. promise B., that in consideration of his doing a particular act, C. would pay him such a sum, or that if C. do not pay him such sum, he (A.) will pay the same, that is no collateral promise, unless C. is privy to the contract, and recognised himself as debtor also; but otherwise A. is the sole debtor, and the statute is out of the case.

Mutual promises to marry need not be in writing, for the statute relates only to agreements made in consideration of the marriage.

A lease not exceeding three years from the making

thereof, and in which the rent reserved amounts to two-thirds of the improved value, is good without writing; but all other parole leases or agreements for any interest in lands have the effect of estates at will only.

All declarations of trust, except such as result by implication of law, must be made in writing.

If a promise depend upon a contingency, which may or may not fall within a year, it is not within the statute: as, a promise to pay a sum of money upon a death or marriage, or upon the return of a ship, or to leave a legacy by will, is good by parole, for such a promise may by possibility be performed within the year. But even a written undertaking to pay the debt of another is void, unless a good consideration appear in writing; and the consideration (if any) cannot be proved by parole evidence.

If a growing crop be purchased without writing, the agreement before part execution may be put an end to by parole notice.

In the first and third sections of the Statute of Frauds, the contracts must be signed by the party or his agent authorised *by writing:* but the agreements specified in the fourth section must be signed by the party, or some one by him lawfully authorised, and the words *by writing* are there omitted. And Lord Redesdale has said upon this, that at all times, (as well before the Act as since) it was necessary to have an authority in writing for creating or passing any estate in land for another; it was otherwise as to contracts which passed no estate. Therefore an agent authorised by parole may make such a written agreement for his principal, as will be sufficient for a Court of Equity to decree a specific performance of.

A Court of Equity will decree a specific performance of a verbal contract, when it is confessed by a defendant in his answer, or when there has been a part performance of it, as by payment of part of the consideration money, or by entering or expending money upon the estate; for such acts preclude the party from denying the existence of the contract, and prove that there can be no fraud or perjury in obtaining the execution of it. But Lord Eldon seems to think that a specific performance cannot be decreed, if the defendant in his answer admit a parole agreement, and at the same time insist upon the benefit of the statute.

If one party only sign an agreement, he is bound by it; and if an agreement be by parole, but it is agreed it shall be reduced into writing, and this is prevented by the fraud of one of the parties, performance of it will be decreed.

OF ASSUMPSIT.

An *assumpsit* is an implied contract, by which one man is bound to do justice to another, upon the principle of natural reason, and the just construction of law. Thus—

1. If I employ a person to transact any business, or perform any work for me, the law implies that I undertook or assumed to pay him so much as his labour deserved. And if I neglect to make him amends, he has a remedy for this injury by bringing his action on the case, upon this implied *assumpsit;* wherein he is at liberty to suggest that I promised to pay him so much as he reasonably deserved, and then to aver that his trouble was really worth such a particular sum, which the defendant has omitted to pay. This is called an *assumpsit* on a *quantum meruit.*

2. There is also an implied *assumpsit* on a *quantum valebat*, which is very similar to the former, being only where one takes up goods or wares of a tradesman, without expressly agreeing for the price. There the law concludes, that both parties did intentionally agree that the real value of the goods should be paid; and an action on the case may be brought accordingly, if the vendee refuse to pay that value.

3. A third species of implied *assumpsits* is, when one has had and received money belonging to another without any valuable consideration given on the receiver's part; for the law construes this to be money had and received for the use of the owner only, and implies that the person so receiving promised and undertook to account for it to the owner. And if he unjustly detain it, an action on the case lies against him, for which he will recover damages. This is a very extensive and beneficial remedy, applicable to almost every case where the defendant has received money which *ex æquo et bono* he ought to refund. It lies for money paid by mistake, or on a consideration which happens to fail, or through imposition, extortion, or oppression, or where any undue advantage is taken of the plaintiff's situation.

4. Where a person has laid out and expended his own money for the use of another at his request, the law implies a promise of repayment, and an action will lie on this *assumpsit.*

If a surety in a bond pay the debt of a principal, he may recover it back from the principal in an action of *assumpsit*, for so much money paid in advance to his use. Yet in ancient time this action could not be maintained; and it is said, that the first case of the kind, in which the plaintiff succeeded, was tried before Mr. Justice Gould, at Dorchester. But this is perfectly consistent with the equitable principles of an *assumpsit*.

5. Likewise, upon a stated account between two merchants or other persons, the law implies that he against whom the balance appears has engaged to pay it to the other, though there be not any actual promise. And from this implication it is frequent for actions on the case to be brought, declaring that the plaintiff and defendant had settled their accounts together, *insimul computassent* (which gives name to this species of *assumpsit*), and that the defendant engaged to pay the plaintiff the balance, but has since neglected to do it. But if no account have been made up, then the legal remedy is by bringing a writ of account, *de computo;* commanding the defendant to render a just account to the plaintiff, or show the Court good cause to the contrary. In this action, if the plaintiff succeed, there are two judgments; the first is, that the defendant do account (*quod computet*) before auditors appointed by the Court; and when such account is finished, then the second judgment is, that he do pay the plaintiff so much as he is found in arrear. This action, by the old common law, lay only against the parties themselves, and not their executors; because matters of account rested solely in their own knowledge. But this defect, after many fruitless attempts in Parliament, was at last remedied by the 4 Anne, c. 16, which gives an action of account against the executors and administrators. But, however, it is found by experience, that the most ready and effectual way to settle these matters of account, is by bill in a Court of Equity, where a discovery may be had on the defendant's oath, without relying merely on the evidence which the plaintiff may be able to produce. Wherefore actions of account, to compel a man to bring in and settle his accounts, are now very seldom used; though, when an account is once stated, nothing is more common than an action upon the implied *assumpsit* to pay the balance.

6. The last class of contracts implied by reason and just construction of law arises upon this supposition, that every one who undertakes any office, employment, trust,

or duty, contracts with those who employ or entrust him to perform it with integrity, diligence, and skill. And if, by his want of either of those qualities, any injury accrue to individuals, they have therefore their remedy and damages by a special action on the case. A few instances will fully illustrate this matter :—

If an officer of the public be guilty of neglect of duty, or a palpable breach of it, of nonfeasance, or of misfeasance; as, if the sheriff do not execute a writ sent to him, or if he wilfully make a false return thereto; in both these cases the party aggrieved shall have an action on the case.

If a sheriff or gaoler suffer a prisoner who is taken upon mesne process (that is, during the pendency of a suit) to escape, he is liable to an action on the case. But if, after judgment, a gaoler or a sheriff permit a debtor to escape who is charged in execution for a certain sum, the debt immediately becomes his own, and he is compellable by action of debt, being for a sum liquidated and ascertained, to satisfy the creditor his whole demand; which doctrine is grounded on the equity of the statute of Westm. 2, 13 Edw. I. c. 11, and 1 Rich. II. c. 12.

An advocate or attorney who betrays the cause of his client, or being retained neglects to appear at the trial, by which the cause miscarries, is liable to an action on the case, for a reparation to his injured client.*

There is also in law always an implied contract with a common innkeeper, to secure his guest's goods in his inn; with a common carrier or bargemaster, to be answerable for the goods he carries; with a common farrier, that he shoes a horse well, without laming him; with a common tailor, or other workman, that he performs his business in a workmanlike manner; in which if they fail, an action on the case lies to recover damages for such breach of their general undertaking.

But if I employ a person to transact any of these concerns, whose common profession or business it is not, the law implies no such *general* undertaking; but, in order to charge him with damages, a *special* agreement is required.

* It has been decided at *Nisi Prius*, that no action can be maintained against an advocate for ignorance, misconduct, or for neglecting to appear at the trial, by which the cause has miscarried. The client must rely wholly upon his advocate's honour. *Peake, N. P.* 96, 122. But in such cases, if complaint be made to the Court in which the advocate practises, it can censure him, order him to pay the costs, or perhaps disbar him.

Also, if an innkeeper or other victualler hang out a sign, and open his house for travellers, it is an implied engagement to entertain all persons who travel that way; and upon this universal *assumpsit* an action on the case will lie against him for damages, if he, without good reason, refuse to admit a traveller.

If any one cheat me with false cards or dice, or by false weights and measures, or by selling me one commodity for another, an action on the case also lies against him for damages, upon the contract which the law always implies, that every transaction is fair and honest.

In contracts likewise for sales, it is constantly understood that the seller undertakes that the commodity he sells is his own; and if it prove otherwise, an action on the case lies against him, to exact damages for this deceit. In contracts for provisions, it is always implied that they are wholesome; and if they be not, the same remedy may be had. Also, if he that sells any thing do, upon the sale, warrant it to be good, the law annexes a tacit contract to his warranty, that if it be not so, he shall make compensation to the buyer; else it is an injury to good faith, for which an action on the case will lie to recover damages. The warranty must be *upon the sale;* for if it be made *after*, and not *at* the time of the sale, it is a void warranty, for it is then made without any consideration; neither does the buyer then take the goods upon the credit of the vendor. Also the warranty can only reach to things in being at the time of the warranty made, and not to things *in futuro*: as, that a horse is sound at the time of buying him, not that he *will be* sound two years hence.

But if the vendor knew the goods to be unsound, and have used any art to disguise them, or if they be in any shape different from what he represents them to be to the buyer, this artifice shall be equivalent to an express warranty, and the vendor is answerable for their goodness.

A general warranty will not extend to guard against defects that are plainly and obviously the object of one's senses; as, if a horse be warranted perfect, and wants either a tail or an ear; unless the buyer in this case be blind. But if cloth be warranted to be of such a length, when it is not, there an action on the case lies for damages; for that cannot be discerned by sight, but only by a collateral proof, the measuring it. Also, if a horse be warranted sound, and he wants the sight of an eye, though this seems to be the object of one's senses, yet as the discernment of such defects is frequently matter of skill, it hath been

held that an action on the case lies to recover damages for this imposition.

Besides the special action on the case, there is also a peculiar remedy, entitled an action of *deceit*, to give damages in some particular cases of fraud, and principally where one man does any thing in the name of another by which he is deceived or injured; as, if one bring an action in another's name, and then suffer a nonsuit, whereby the plaintiff becomes liable to costs; or where one obtains or suffers a fraudulent recovery of lands, tenements, or chattels, to the prejudice of him that hath right. As, when by collusion the attorney of the tenant makes default in a real action, or where the sheriff returns that the tenant was summoned, when he was not so, and in either case he loses the land, the writ of deceit lies against the demandant, and also the attorney, or the sheriff and officers, to annul the former proceedings, and recover back the land. It also lies in the cases of warranty before mentioned, and other personal injuries committed contrary to good faith and honesty. But an action on the case for damages, in nature of a writ of deceit, is more usually brought upon these occasions: and, indeed, it is the only remedy for a lord of a manor, in or out of ancient demesne, to reverse a fine or recovery had in the king's courts of lands lying within his jurisdiction; which would otherwise be thereby turned into frank fee. And this may be brought by the lord against the parties and *cestui que use* of such fine or recovery; and thereby he shall obtain judgment, not only for damages (which are usually remitted), but also to recover his court and jurisdiction over the lands, and to annul the former proceedings.

OF CONTRACTS.

A CONTRACT, which usually conveys an interest merely in action, is thus defined: "an agreement, upon sufficient consideration, to do, or not to do, a particular thing." From which definition there arise three points to be contemplated in all contracts: the *agreement*, the *consideration*, and the *thing* to be done or omitted, or the different species of contracts.

First, then, it is an *agreement*, a mutual bargain, or

convention; and therefore there must at least be two contracting parties, of sufficient ability to make a contract: as, where A. contracts with B. to pay him £100, he thereby transfers a property in such sum to B.; which property is, however, not in possession, but in action merely, and recoverable by suit at law.

This* contract, or agreement, may be either express or implied. *Express* contracts are where the terms of the agreement are openly uttered and avowed at the time of the making; as, to deliver an ox, or ten loads of timber, or to pay a stated price for certain goods. *Implied* are such as reason and justice dictate, and which, therefore, the law presumes that every man undertakes to perform; as, if I employ a person to do any business for me, or perform any work, the law implies that I undertook or contracted to pay him as much as his labour deserves.

A contract may be also either *executed*, as if A. agree to change horses with B., and they do it immediately; in which case the possession and the right are transferred together: or it may be *executory*, as if they agree to change next week; here the right only vests, and their reciprocal property in each other's horse is not in possession, but in action. For a contract *executed* (which differs nothing from a grant) conveys a *chose in possession;* a contract *executory* conveys only a *chose in action.*

Having thus shewn the general nature of a contract, we are, secondly, to proceed to the *consideration* upon which it is founded, or the reason which moves the contracting party to enter into the contract. It must be a thing lawful in itself, or else the contract is void. A *good* consideration is that of blood, or natural affection between near relations; the satisfaction accruing from which the law esteems an equivalent for whatever benefit may move from one relation to another. This consideration may sometimes, however, be set aside, and the contract become void, when it tends in its consequences to defraud creditors or other third persons of their just rights. But a contract for any *valuable* consideration, as for marriage, for money, for work done, or for other reciprocal contracts, can never be impeached at law; and if it be of a sufficient adequate value, is never set aside in equity; for the person contracted with has then given an equivalent in recompence, and is therefore as much an owner, or a creditor, as any other person.

A consideration of some sort or other is so absolutely necessary to the forming of a contract, that a *nudum pactum*,

or ageement to do or pay any thing on one side without any compensation on the other, is totally void in law; and a man cannot be compelled to perform it.

As, if a man promises to give another £100, here there is nothing contracted for, or given on the one side, and therefore there is nothing binding on the other. And, however a man may or may not be bound to perform it in honour or conscience, which the municipal laws do not take upon them to decide, certainly those municipal laws will not compel the execution of what he had no visible inducement to engage for. But any degree of reciprocity will prevent the pact from being nude: nay, even if the thing be founded on a prior moral obligation (as a promise to pay a just debt, though barred by the Statute of Limitations), it is no longer *nudum pactum*. And as this rule was principally established to avoid the inconvenience that would arise from setting up mere verbal promises, for which no good reason could be assigned, it therefore does not hold in some cases, where such promise is authentically proved by written documents. For if a man enter into a voluntary bond, or give a promissory note, he shall not be allowed to aver the want of a consideration in order to evade the payment; *for* every bond, from the solemnity of the instrument, and every note, from the subscription of the drawer, carries with it an internal evidence of a good consideration. Courts of justice will therefore support them both as against the contractor himself, but not to the prejudice of creditors, or strangers to the contract. It is to be observed, however, in promissory notes, that if an action be brought by the payee, the want of consideration will be a bar to the recovery; but an indorsee who has given full value for a bill of exchange, may maintain an action against him who drew it, or he who accepted it without any consideration.

We are next to consider the *thing agreed* to be done or omitted. "A contract is an agreement, upon a sufficient consideration, *to do or not to do, a particular thing.*" The most usual contracts, whereby the right of chattels personal may be acquired, are, that of *sale* or *exchange*, that of *bailment*, that of *hiring and borrowing*, and that of *debt*.

Sale, or Exchange.

Sale, or *exchange*, is a transmutation of property from one man to another, in consideration of some price or recompence in value; for there is no sale without a recom-

pence; there must be *quid pro quo*. If it be a commutation of goods, it is more properly an *exchange;* but if it be a transferring of goods for money, it is called a *sale*. But with regard to the *law* of sales and exchanges, there is no difference; we shall therefore treat of them both under the denomination of sales only; and shall consider their force and effect, in the first place where the vendor *hath* in himself, and secondly, where he *hath not*, the property of the thing sold.

Where the vendor *hath in himself the property* of the goods sold, he hath the liberty of disposing of them to whomever he pleases, at any time, and in any manner, unless judgment has been obtained against him for a debt or damages, and the writ of execution is actually delivered to the sheriff. For then, by the Statute of Frauds, the sale shall be looked upon as fraudulent, and the property of the goods shall be bound to answer the debt, from the time of delivering the writ. Formerly it was bound from the *teste*, or issuing of the writ, and any subsequent sale was fraudulent; but the law was thus altered in favour of *purchasers*, though it still remains the same between the *parties;* and, therefore, if a defendant die after the awarding, and before the delivery of the writ, his goods are bound by it in the hands of the executor. If two writs are delivered to the sheriff on the same day, he is bound to execute the first which he receives; but if he levies and sells under the second, the sale to a vendor without notice of the first, is irrevocable, and the sheriff makes himself answerable to both parties.

If a man agree with another for goods at a certain price, he cannot carry them away before he hath paid for them; for it is no sale without payment, unless the contrary be expressly agreed. And, therefore, if the vendor says, the price of a beast is four pounds, and the vendee says he will give four pounds, the bargain is struck; and they neither of them are at liberty to be off, provided immediate possession be tendered by the other side. But if neither the money be paid, nor the goods delivered, nor tender made, nor any subsequent agreement be entered into, it is no contract, and the owner may dispose of the goods as he pleases. But if any part of the price be paid down, if it be but a penny, or any portion of the goods delivered by way of *earnest*, the property of the goods is absolutely bound by it; and the vendee may recover the goods by action, as well as the vendor may the price of them. Lord Holt has laid down the following rules, *viz.*

"That, notwithstanding the earnest, the money must be paid upon fetching away the goods, because no other time for payment is appointed. That earnest only binds the bargain, and gives the party a right to demand; but then a demand without the payment of the money is void. That, after notice given, the vendor cannot sell the goods to another without a default in the vendee; and therefore if the vendee do not come and pay, and take the goods, the vendor ought to go and request him: and then if he do not come and pay, and take away the goods in convenient time, the agreement is dissolved, and he is at liberty to sell them to any other person." And such regard does the law pay to earnest, as an evidence of a contract, that, by 29 Chas. II. c. 3, no contract for the sale of goods to the value of £10 or more shall be valid, unless the buyer actually receive part of the goods sold, by way of earnest on his part; or unless he give part of the price to the vendor, by way of earnest to bind the bargain, or in part of payment; or unless some note in writing be made, and signed by the party or his agent, who is to be charged with the contract. And with regard to goods under the value of £10, no contract or agreement for the sale of them shall be valid, unless the goods are to be delivered within the year, or unless the contract be made in writing, and signed by the party or his agent, who is to be charged therewith.

It seems to be established, that contracts for goods which cannot be delivered immediately are not within the statute, and are binding without writing; as an agreement to take a carriage when it is built, or corn when it is thrashed, and the like. And this is binding, though in fact the carriage be not delivered within the year. But if the original agreement were, that it should not at any event be delivered till after a year, then the contract will not be valid unless it be reduced into writing. But if the article exist at the time in a state fit for delivery, if the agreement be for more than £10, it must be in writing, notwithstanding the delivery is to be postponed to a future day.

As soon as the bargain is struck, the property of the goods is transferred to the vendee, and that of the price to the vendor: but the vendee cannot take the goods until he tenders the price agreed on. But if he tender the money to the vendor, and he refuse it, the vendee may seize the goods, or have an action against the vendor for detaining them. And by a regular sale, without delivery,

the property is so absolutely vested in the vendee, that if A. sell a horse to B. for £10, and B. pay him earnest, or sign a note in writing of the bargain, and afterwards (before the delivery of the horse or money paid) the horse dies in the vendor's custody, still he is entitled to the money, because, by the contract, the property was in the vendee.

But property may also in some cases be transferred by sale, though the vendor *hath none at all* in the goods; for it is expedient that the buyer, by taking proper precautions, may at all events be secure of his purchase; otherwise all commerce between man and man must soon be at an end. And therefore the general rule of law is, that all sales and contracts of any thing vendible in fairs or markets *overt* (that is, open), shall not only be good between the parties, but also be binding on all those that have any right or property therein. Market overt in the country is only held on the special days provided for particular towns by charter or prescription; but in London, every day, except Sunday, is market-day. The market-place, or spot of ground set apart by custom for the sale of particular goods, is also in the country the only market overt: but in London every shop in which goods are exposed publicly to sale is market overt, for such goods only as the owner professes to trade in. But if my goods be stolen from me, and sold out of market overt, my property is not altered, and I may take them wherever I find them. And it is expressly provided by 1 James I. c. 21, that the sale of any goods wrongfully taken to any pawnbroker in London, or within two miles thereof, shall not alter the property; for this being usually a clandestine trade, is therefore made an exception to the general rule. And even in market overt, if the goods be the property of the king, such sale (though regular in all other respects) will in no case bind him; though it binds infants, femme coverts, idiots, and lunatics, and men beyond sea or in prison: or if the goods be stolen from a common person, and then taken by the king's officer from the felon, and sold in open market; still if the owner have used due diligence in prosecuting the thief to conviction, he loses not his property in the goods. So likewise, if the buyer know the property not to be in the seller, or there be any other fraud in the transaction; if he know the seller to be an infant, or femme covert not usually trading for herself; if the sale be not originally and wholly made in the fair or market, or not at the usual hours; the owner's pro-

perty is not bound thereby. If a man buy his own goods in a fair or market, the contract of sale shall not so bind him as that he shall render the price; unless the property had been previously altered by a former sale. And, notwithstanding any number of intervening sales, if the original vendor, who sold without having the property, come again into possession of the goods, the original owner may take them, when found in his hands who was guilty of the first breach of justice.

But there is one species of personal chattels in which the property is not easily altered by sale without the express consent of the owner, and those are horses. For a purchaser gains no property in a horse that has been stolen, unless it be bought in a fair or market overt, according to the direction of the 2 Phil. and Mary, c. 7, and 31 Eliz. c. 12; by which it is enacted, that the horse shall be openly exposed, in the time of such fair or market, for one whole hour together, between ten in the morning and sun-set, in the public place used for such sales, and not in any private yard or stable; and afterwards brought by both the vendor and vendee to the book-keeper of such fair or market: that toll be paid, if any due; and if not, one penny to the book-keeper: who shall enter down the price, colour, and marks of the horse, with the names, additions, and abode of the vendee and vendor, the latter being properly attested. Nor shall such sale take away the property of the owner, if within six months after the horse is stolen, he puts in his claim before some magistrate, where the horse shall be found, and, within forty days more, proves such his property by the oath of two witnesses, and tenders to the person in possession such price as he *boná fide* paid for him in market overt. But in case any one of the points before-mentioned be not observed, such sale is utterly void; and the owner shall not lose his property, but at any distance of time may seize or bring an action for his horse, wherever he happens to find him.

A purchaser of goods and chattels may have a satisfaction from the seller, if he sell them as his own, and the title prove deficient, without any express warranty for that purpose. But with regard to the goodness of the wares purchased, the vendor is not bound to answer; unless he expressly warrant them to be sound and good, or unless he knew them to be otherwise, and have used any art to disguise them, or unless they turn out to be different from what he represented them to the buyer.

The following distinctions, which are laid down by Mr. Christian, in his notes on Blackstone, seem peculiarly referable to the sale of horses. If the purchaser give what is called a sound price, that is, such as from the appearance and nature of the horse, would be a fair and full price for it, if it were in fact free from blemish and vice, and he afterwards discover it to be unsound or vicious, and return it in a reasonable time, he may recover back the price he has paid, in an action against the seller for so much money had and received to his use, provided he can prove the seller knew of the unsoundness or vice at the time of the sale; for the concealment of such a material circumstance is a fraud, which vacates the contract. But if a horse be sold with an express warranty by the seller that it is sound and free from vice, the buyer may maintain an action upon his warranty or special contract, without returning the horse to the seller, or without even giving him notice of the unsoundness or viciousness of the horse; yet it will raise a prejudice against the buyer's evidence, if he do not give notice within a reasonable time that he has reason to be dissatisfied with his bargain. But the warranty cannot be tried in a general action of *assumpsit*, to recover back the price of the horse. In a warranty, it is not necessary to show that the seller knew of the horse's imperfections at the time of the sale.

In sale of horses, it has been considered, that without a warranty of soundness by the seller, or fraud on his part, the buyer must stand to all losses arising from latent defects: the same has been held in the sale of hops.

Bailment.

Bailment is a delivery of goods in trust, upon a contract, express or implied, that the trust shall be faithfully executed on the part of the bailee. As, if cloth be delivered, or (in the legal dialect) bailed, to a tailor, to make a suit of clothes, he has it upon an implied contract to render it again when made, and that in a workmanlike manner. If money or goods be delivered to a common carrier, to convey from Oxford to London, he is under a contract in law to pay, or carry them to the person appointed. If a horse or other goods be delivered to an innkeeper or his servant, he is bound to keep them safely, and restore them when his guest leaves the house. If a man take in a horse, or other cattle, to graze and depasture in his grounds, which the law calls *agistment*, he takes them upon an implied contract to return them on

demand to the owner. If a pawnbroker receive plate or jewels as a pledge or security for the repayment of money lent thereon at a day certain, he has them upon an express contract or condition to restore them, if the pledger perform his part by redeeming them in due time. And so if a landlord distrain goods for rent, or a parish officer for taxes, these for a time are only a pledge in the hands of the distrainors, and they are bound by an implied contract in law to restore them on payment of the debt, duty, and expenses, before the time of sale; or, when sold, to render back the overplus. If a friend deliver any thing to his friend to keep for him, the receiver is bound to restore it on demand. But such a general bailment will not charge the bailee with any loss, unless it happen by gross neglect, which is an evidence of fraud: but if he undertake specially to keep the goods safely and securely, he is bound to take the same care of them as a prudent man would take of his own.

In all these instances there is a special qualified property transferred from the bailor to the bailee, together with the possession. And, on account of this qualified property of the bailee, he may (as well as the bailor) maintain an action against such as injure or take away these chattels.

ACTIONS FOR ASSAULT AND BATTERY.

All injuries affecting the personal security of individuals are directed either against their lives, their limbs, their bodies, or their reputations. As to those injuries which affect the *life* of man, we shall reserve them for a distinct consideration, being one of the most atrocious species of crime. The two next, *viz.* those affecting the *limbs* and *bodies* of individuals, we shall consider in one and the same view, and make them the subject of our present remarks. These injuries may be committed—

1. By *threats* and menaces of bodily hurt, through fear of which a man's business is interrupted. The remedy for this is in pecuniary damages, to be recovered by action of trespass *vi et armis;* this being an inchoate, though not absolute violence.

2. By *assault;* which is an attempt or offer to beat another, without touching him; as by holding up one's fist at

him in a menacing manner; striking at another with a cane or stick, though the party miss his aim; presenting a gun, when loaded, at a person; drawing a sword or bayonet; throwing a bottle or glass, with intent to wound or strike. All these denote at the time an intention of doing an injury, and are each considered as an inchoate violence, amounting considerably higher than bare threats; and therefore, though no actual suffering is proved, yet the party injured may have redress by action of trespass *vi et armis*, wherein he shall recover damages as a compensation for the injury.

3. By *battery;* which is the unlawful beating of another. The least touching of another's person wilfully, or in anger, is a battery; every man's person being sacred, and no other having a right to meddle with it in any the slightest manner. But battery is in some cases justifiable, or lawful: as where one who hath authority, a parent or master, gives moderate correction to his child, his scholar, or his apprentice. So also, on the principle of self-defence, if one strike me first, or even only assault me, I may strike in my own defence; and if sued for it, may plead *son assault demesne*, or that it was the plaintiff's own original assault that occasioned it. So likewise, in defence of my goods or possessions, if a man endeavour to deprive me of them, I may justify laying hands upon him to prevent him; and in case he persist with violence, I may proceed to beat him away. Thus, too, in the exercise of an office, as that of churchwarden or beadle, a man may lay hands upon another to turn him out of the church, and prevent his disturbing the congregation; and, if sued for this or the like battery, he may set forth the whole case, and plead that he laid hands upon him gently, *molliter manus imposuit*, for this purpose. On account of these causes of justification, battery is defined to be the *unlawful* beating of another; for which the remedy is, as for assault, by action of trespass *vi et armis;* wherein the jury will give adequate damages.

4. By *wounding;* which consists in giving another some dangerous hurt, and is only an aggravated species of battery.

5. By *mayhem;* which is an injury still more atrocious, and consists in violently depriving another of the use of a member proper for his defence in fight. This is a battery, attended with this aggravating circumstance, that thereby the party injured is for ever disabled from making so good a defence against future external injuries as he

otherwise might have done. Among these defensive members are reckoned not only arms and legs, but a finger, an eye, and a foretooth, and also some others. But the loss of one of the jaw teeth, the ear, or the nose, is no mayhem at common law: as they can be of no use in fighting. The same remedial action of trespass *vi et armis* lies also to recover damages for this injury. If the ear be cut off, treble damages are given by 37 Hen. VIII. c. 6, though this is not mayhem at common law.

Besides these remedies, the Act of the 43 Geo. III. c. 58, enacts, if any person shall wilfully and maliciously stab or cut any of his Majesty's subjects, with intent to murder, rob, maim, disfigure, or disable him, or to do him some grievous bodily harm, or with intent to resist or prevent the apprehension and detainer of the person so stabbing or cutting, or of any of his accomplices, for offences for which they might be lawfully apprehended, he, his counsellors, aiders, and abettors, shall be guilty of felony without benefit of clergy: provided, that if such acts of stabbing or cutting were committed under circumstances, that if death should ensue, the same would not in law amount to the crime of murder, then the person so indicted shall be acquitted. This act also extends the penalties to those who are guilty of maliciously shooting at another.

ACTIONS FOR SLANDER.

Slander is a civil injury, arising by any thing which affects a man's reputation or good name, and for which an action of damages will lie, as by malicious, scandalous, and slanderous words, tending to his damage and derogation. As if one man maliciously and falsely utter any slander or false tale of another, which, if true, would be punishable by law; as to say that a man has poisoned or murdered another, or is perjured; or which may exclude him from society, with charging him with having a contagious disorder, as the leprosy, the plague, the lues venerea; or which may impair his trade, profession, or livelihood, as to call a tradesman a bankrupt, a physician a quack, a lawyer a knave.

Words spoken in derogation of a peer, a judge, or other great officers of the crown, which are called *scandalum magnatum*, are held to be still more heinous; and

though they be such as would not be actionable in the case of a common person, yet in this case they amount to an atrocious injury. Words also tending to scandalise a magistrate, or a person in a public trust, are deemed more criminal than in the case of a private man. And it is now held, that for the scandalous words in all the cases we have mentioned, an action on the case may be had, even before the injury has been sustained, and upon the mere probability that it might have happened.

In order to sustain this action, it is essentially necessary that the words should contain an imputation which, if true, would subject the party calumniated to the penalties of the criminal law. But an imputation of the mere defect or want of moral virtue, or moral duties, or obligations, is not sufficient. To call a man a thief, unless it be intended to impute felony to him, is not actionable. Hence, where that expression is accompanied with other words, which clearly denote that the speaker did not intend to impute felony to the party charged, no action will lie.

With regard to words that do not thus apparently, and upon the face of them import such defamation as will of course be injurious, it is necessary that the plaintiff should aver some particular damage to have happened, which is called laying his action with a *per quod*. As if I say that such a clergyman is a bastard, he cannot for this bring an action against me, unless he can show some special loss by it; in which case he may bring his action against me, for saying he was a bastard, *per quod* he lost the presentation to such a living. In like manner, to slander another man's title, by spreading such injurious reports as, if true, would deprive him of his estate (as to call the issue in tail, or one who hath land by descent, a bastard), is actionable, provided any special damage accrue to the proprietor thereby; as if he lose an opportunity of selling the land.

Scandalous words, whether spoken before a man's face, or behind his back, by way of affirmation or report, in jest or earnest, whether sober or drunk, &c. are actionable; and so they are, whether the words be spoken directly or indirectly, or obliquely: and though they are pronounced in any foreign language, if understood: but where they can have a double interpretation, they shall be taken in the mildest sense, that no action shall lie.

If one say, that another said a third person did a certain scandalous thing, such third person may have his

action of slander against the first man, with an averment that the second never said so, whereby the first is the author of the scandal. In case the slander proceed from a man's wife, the husband and wife must be sued for it, and not she alone. And for any scandal against the wife, he and she are to bring the action; but for words against both a man and his wife, the husband may prosecute one action for his slander, and he and his wife may afterwards sue another action for hers.

Mere scurrility, or opprobrious words, which neither in themselves import, nor are in fact attended with any injurious effects, will not support an action. So, scandals which concern matters merely spiritual, as to call a man *heretic* or *adulterer*, are cognisable only in the Ecclesiastical Court: unless any temporal damage ensue, which may be a foundation for a *per quod*. Words of heat and passion, as to call a man *rogue* and *rascal*, productive of no ill consequence, and not of any of the dangerous species before mentioned, are not actionable. Neither are words spoken in a friendly manner, as by way of advice, admonition, or concern, without any tincture or circumstance of ill-will; for, in both these cases, they are not *maliciously* spoken, which is part of the definition of slander. Neither are any reflecting words made use of by counsel in legal proceedings, and pertinent to the cause in hand, a sufficient cause of action for slander.

When the words are utterly uncertain, no *inuendo* or averment can make them good: and to these actions the defendant may plead the general issue, Not Guilty; or, if the plaintiff declare on some of the words only, when altogether they are not actionable, the defendant may set them forth at large as he spoke them, and traverse or justify the whole, &c. Also, if the defendant can make proof of the words, he may plead special justification; but if the plea be not made good, the damages will be greatly aggravated.

ACTIONS FOR LIBEL.

There is another species of civil injuries, which affect a man's reputation, and that is, by printed or written libels, pictures, signs, and the like, by which means a person is exposed to public hatred, contempt, and ridicule. The

direct tendency of libels is a breach of the public peace, by stirring up the objects of them to revenge, or perhaps to bloodshed.

The communication of a libel to any one person is a publication in the eye of the law; and therefore the sending an abusive private letter to a man is as much a libel as if it were openly printed, for it equally tends to a breach of the peace. For the same reason, it is immaterial, with respect to the essence of a libel, whether the matter in it be true or false, since the provocation, and not the falsity, is the thing to be punished criminally; though, doubtless, the falsehood of it may aggravate its guilt, and enhance its punishment. In a *civil* action, however, a libel must appear to be *false*, as well as scandalous; for if the charge be true, the plaintiff has received no private injury, and has no ground to demand a compensation for himself, whatever offence it may be against the public peace: and therefore, upon a civil action, the truth of the accusation may be pleaded in bar of the suit. But, in a *criminal* prosecution, the tendency which all libels have to create animosities, and to disturb the public peace, is the whole that the law considers; and therefore, in such prosecutions, the only points to be inquired into are, first, the making or publishing of the book or writing; and, secondly, whether the matter be criminal; and if both these points be against the defendant, the offence against the public is complete. The punishment of libellers, for either making, repeating, printing, or publishing a libel, is fine, and such other punishment as the Court in its discretion shall inflict; regarding the quantity of the offence, and the quality of the offender.

It has been held, that the truth of a libel is no justification in a criminal prosecution, yet, in many instances, it is considered as an extenuation of the offence; and the Court of King's Bench has laid down this general rule, *viz.* that it will not grant an information for a libel, unless the prosecutor who applies for it make an affidavit, asserting directly and pointedly that he is innocent of the charge imputed to him. But this rule may be dispensed with, if the person libelled reside abroad, or if the imputations of the libel are general and indefinite, or if it is a charge against the prosecutor for language which he has held in Parliament.

This species of defamation, *viz.* libel, is usually termed written scandal, and is considered the more offensive,

inasmuch as it is presumed to have been entered upon with coolness and deliberation, and is propagated wider than any other scandal.

The important distinction between libels and words spoken, was fully established in the case Villars *v.* Mousely. As there is a difference between the malignity and injurious consequences of slanderous words spoken or written, many words, which if spoken would not be actionable, are actionable if uttered in the way of libel. In the above case it was decided, that whatever renders a man ridiculous, or lowers him in the esteem and opinion of the world, amounts to a libel; though the same expression, if spoken, would not have been defamation. Hence the word *swindler*, if spoken of another (unless it be spoken in relation to his trade or business), is not actionable; but if it be published in the way of libel, it is so. Also, the publication of a letter, containing some verses in which the plaintiff was called an *itchy old toad*, was deemed a libel.

The publication of a letter, in which the plaintiff was stated to be "one of the most infernal villains that ever disgraced human nature," has been held to be actionable, without proof of special damage.

It is no libel where a writing inveighs against no man in general, or against a particular order of men; it must descend to particulars and individuals.

Defamation by libel, as by scandalous writing, &c. is actionable; and printing or writing may be libellous, though the scandal be not charged in direct terms, but ironically, or though there be only the first and last letter of the name, if the jury will find it to point at a particular person: and the person who is the author or contriver, and the procurer and publisher of a libel, knowing it to be such, are all punishable; as are booksellers, &c. who sell libels, although they know not the contents thereof. And the sale of a libel by a servant in the shop is *primâ facie* evidence of publication in a prosecution against the master, and is sufficient for conviction, unless contradicted by contrary evidence, shewing that he was not privy, nor in any degree assenting to it.

It had frequently been determined by the Court of King's Bench, that the only questions for the consideration of the jury, in criminal prosecutions for libels, were, the fact of publication, and the truth of the inuendoes; that is, the truth of the meaning and sense of the passages of the libel, as stated and averred in the record: and that

the judge or Court alone were competent to determine whether the subject of the publication was or was not a libel. (See the case of the Dean of St Asaph, 3 T. R. 428.) But the legality of this doctrine having been much controverted, the 32 Geo. III. c. 60, commonly called Mr. Fox's bill, was passed, intituled "An act to remove doubts respecting the functions of juries in cases of libels;" which declares and enacts, that on every trial of an indictment or information for a libel, the jury may give a general verdict of Guilty or Not Guilty, upon the whole matter in issue, and shall not be required or directed by the judge to find the defendant guilty merely on the proof of the publication of the paper charged to be a libel, and of the sense ascribed to it on the record. But the statute provides, that the judge may give his opinion to the jury respecting the matter in issue, and the jury may, at their discretion, as in other cases, find a special verdict; and the defendant, if convicted, may move the Court, as before the statute, in arrest of judgment.

A general reflection on the government has been deemed libellous, though no particular person has been reflected upon; and the writing against the known law and religion of the country, for the purpose of bringing them into contempt, is clearly a libel.

A comment upon a literary production, exposing its follies and errors, and holding up the author to ridicule, will not be deemed a libel, provided such comment do not exceed the limits of fair and candid criticism, by attacking the character of the writer, unconnected with his work. But if a person, under pretence of criticising a literary work, defame the private character of the author, and, instead of writing in the spirit, and for the purpose of fair and candid discussion, travel into collateral matter, and introduce facts not stated in the work, accompanied with injurious comments upon them, such person is a libeller, and liable to an action.

Printing or writing may be libellous, though the scandal be not directly charged, but obliquely and ironically.

It has been held, that it is not competent for a man charged with a libel to urge that one similar to that for which he is prosecuted, was published on a former occasion by other persons, who were never prosecuted.

In the making of libels, if one man dictate, and another write, both are deemed guilty.

It has been laid down by great legal authorities, that truth is no justification for a libel; and a very learned

writer seems to doubt whether such a plea would now be admitted by the Courts, if the accusation in the libel did not amount to an indictable offence. But this doctrine may be questioned ; and it is highly probable that in an action for libel, if specific instances can be stated on the record, and proved by evidence, so as to support the general charge of the libel, the Courts would determine them to be a sufficient justification of the defendant. But the chief excellence of the civil action for libel consists in the opportunity it affords the person traduced of vindicating his innocence, as well as receiving a reparation for the injury sustained.

If an action be brought for a libel written in a foreign language, the original with the translation must be stated in the declaration.

By the 60 Geo. III. c. 8, sec. 1, in any verdict, or judgment by default, had against any person for composing, printing, or publishing any blasphemous libel, or any seditious libel tending to bring into hatred and contempt the person of his Majesty, his heirs or successors, or the Regent, or the government and constitution of the United Kingdom as by law established, or either House of Parliament, or to excite his Majesty's subjects to attempt the alteration of any matter in church or state as by law established, otherwise than by lawful means, the judge or court may order the seizure of all copies of the libel : and the officers are empowered to enter by force, in the day-time, any premises containing any copies of the same.

But in case judgment shall be arrested, or if, after judgment shall have been entered, the same shall be reversed upon writ of error, all copies so seized shall be forthwith returned, free of all charge and expense, and without the payment of any fees ; and the same provisions are extended to the Justiciary Court of Scotland.

Persons found guilty a second time of printing or publishing blasphemous or seditious libels were liable to be banished from all parts of his Majesty's dominions for any term of years the Court should think fit, besides being subject to the same punishments as may be inflicted in cases of high misdemeanour. And any person being found in any part of his Majesty's dominions forty days after sentence of banishment passed, were to be transported for any time not exceeding fourteen years :—*but this disgrace to the age is abolished by* 1 Wm. IV. c. 73 ; *and no person can now be transported for the offence of libel.*

The 60 Geo. III. does not alter the law or practice of

Scotland regarding the punishment of persons convicted of composing, printing, publishing, or circulating any blasphemous or seditious libel.

ACTIONS FOR MALICIOUS PROSECUTIONS.

Another injury affecting the persons of individuals is by preferring malicious indictments or prosecutions against them. For this the law has provided an adequate remedy in damages, either by an action of conspiracy, which must be brought against two persons at the least; or, which is the most usual way, by a special action on the case for a false and malicious prosecution. But it is not actionable where a civil action is brought against a man, though there is no ground for it: because it is a claim of right. For suing a man in the ecclesiastical court, for matters not cognizable there, an action will lie; and for prosecuting an indictment falsely it will lie, though the indictment were bad, or not found by the grand jury. And in all cases it is necessary to prove that the prosecution was instituted from malice, and without any probable cause, and that the plaintiff sustained an injury by the malicious prosecution, either in his person by imprisonment, his reputation by the scandal, or in his property by the expense. It has also been held, that an action will lie for maliciously holding a party to bail, either where there is not any debt due, or where the party is held to bail for a larger sum than is really due.

In the case Bishop *v.* Rice, at the Hereford Assizes, March 25th, 1821, Mr. Justice Park said, that in order to support an action for malicious prosecution, two circumstances must concur—malice and want of probable cause; neither of which alone would suffice: for if a prosecutor were actuated by the most diabolical malice, and yet had reasonable grounds to warrant him, he was not liable; neither was he, if he had no sufficient grounds, and yet acted fairly, and without improper motives. It was not necessary, however, for the complainant to prove malice by express words or threats; but the jury would infer it from the total want of probable cause, if they considered the charge so groundless that it must have been malicious. The existence or non-existence of probable cause was a

question of law for the judge; but it was a question arising on facts which the jury were to investigate.

An action will also lie for maliciously suing out a commission of bankruptcy against a person, which is afterwards superseded.

And it may be observed generally, that the action on the case for a malicious prosecution varies in its form as the circumstances of each particular grievance may require. Whatever engines of the law malice may employ to injure individuals, whether in the shape of indictment or information, which charge a party with crimes injurious to his fame and reputation, and tend to deprive him of his liberty; or, in short, whether such malice is shown by malicious arrests, or by exhibiting groundless accusations, this action on the case will always afford an adequate remedy.

In an action for a malicious prosecution, where the plaintiff has been indicted for a felony, it is necessary to produce a copy of the record granted by the Court before which he was acquitted; but it is otherwise in misdemeanors, where the action may be sustained by the production of the original record of the acquittal.

ACTIONS FOR FALSE IMPRISONMENT.

THE next injury to the persons of individuals which we are to consider, is that of false imprisonment.

To constitute this injury, there are two points requisite: —1. The detention of the person; and, 2. The unlawfulness of such detention. Every confinement of the person is an imprisonment, whether it be in a common prison, or in a private house. or in the stocks, or even by forcibly detaining one in the public streets. Unlawful or false imprisonment consists in such confinement or detention without sufficient authority. Lawful authority may arise either from some process from the courts of justice; or from some warrant from a legal officer, having power to commit under his hand and seal, and expressing the cause of such commitment; or from such other special cause, warranted from the necessity of the thing, either by common law or Act of Parliament; such as the arresting of a felon by a private person without warrant, the impressing of mariners for the public service, or the apprehending of

waggoners for misbehaviour in the public highways. False imprisonment may also arise by executing a lawful warrant or process at an unlawful time, as on a Sunday; for the statute hath declared, that such service or process shall be void.

The means of removing the injury of false imprisonment is by the writ of *habeas corpus*, the most celebrated writ in the English laws, and of which there are various kinds made use of by the Courts at Westminster, for removing prisoners from one Court into another, for the more easy administration of justice. Such is the *habeas corpus ad respondendum*, when a man has a cause of action against one who is confined by the process of some inferior Court, in order to remove the prisoner, and charge him with this new action in the Court above. Such is that of *ad satisfaciendum*, when a prisoner hath judgment against him in an action, and the plaintiff is desirous to bring him up to some superior Court, to charge him with process of execution. Such also are those of *ad prosequendum, testificandum, deliberandum*, &c. which issue, when it is necessary to remove a prisoner, in order to prosecute or bear testimony in any Court, or to be tried in the proper jurisdiction wherein the fact was committed. Such is, lastly, the common writ of *ad faciendum et recipiendum*, which issues out of the Courts at Westminster Hall, when a person is sued in some inferior jurisdiction, and is desirous to remove the action into the superior Courts; commanding the inferior judges to produce the body of the defendant, together with the day and cause of his caption and detainer, whence the writ is frequently denominated an *habeas corpus cum causâ*, to *do and receive* whatsoever the King's Courts shall consider in that behalf. This is a writ grantable of common right without any motion in Court; and it instantly supersedes all proceedings in the Court below. But, in order to prevent the surreptitious discharge of prisoners, it is ordered by 1 & 2 Wm. and Mary, c. 13, that no *habeas corpus* shall issue to remove any prisoner out of any gaol, unless signed by some judge of the Court out of which it is awarded. And by 11 Geo. III. c. 70, no cause under the value of ten pounds shall be removed by *habeas corpus* or otherwise into any superior Court, unless the defendant removing the same shall give special bail for payment of the bill and costs.

But the great and efficacious writ, in all manner of illegal confinement, is that of *habeas corpus ad subjiciendum*; directed to the person detaining another, and commanding

him to produce the body of the prisoner, with the day and cause of his caption and detention, *ad faciendum, subjiciendum, et recipiendum*, to do, submit to, and receive whatsoever the judge or Court awarding such writ shall consider in that behalf.

In the King's Bench and Common Pleas it is necessary to apply for this writ by motion to the Court, as in the case of all other prerogative writs (*certiorari*, prohibition, *mandamus*, &c.) which do not issue as of mere course, without showing some probable cause why the extraordinary power of the crown is called in to the party's assistance. On the other hand, if a probable ground be shown, that the party is imprisoned without just cause, and therefore hath a right to be delivered, the writ of *habeas corpus* is then a writ of right, "which may not be denied, but ought to be granted to every man that is committed or detained in prison, or otherwise restrained, though it be by the command of the King, the privy council, or any other."

By 56 Geo. III. c. 90, it is provided, that where any person shall be confined (otherwise than for some criminal matter, and except persons imprisoned for debt, or by process in any civil suit) within England, Wales, or Berwick-upon-Tweed, or the isles of Jersey, Guernsey, or Man, it shall be lawful for one of the barons of the Exchequer, as well as for any one of the justices of one bench or the other, in England or Ireland, to award, in vacation time, a writ of *habeas corpus ad subjiciendum*, to be directed to the person in whose custody the person so confined shall be returnable immediately before the person awarding the same, or any other judge of the Court.

If the person to whom any writ of *habeas corpus* shall be directed, shall wilfully neglect or refuse to make a return, he shall be guilty of a contempt of court, and may be bound over to answer such contempt in the ensuing term: but if the writ shall be awarded so late in the vacation, that obedience thereto cannot be conveniently paid during such vacation, the same may be made returnable in Court at a day certain in the next term; also, if the writ shall be awarded by the Court of King's Bench, Common Pleas, or Exchequer (which last Court shall have like power to award such writs), but so late that, in the judgment of the Court, obedience thereto cannot be conveniently paid during such term, the same shall, at the discretion of the Court, be made returnable at a day certain in the then next vacation, before any justice or baron of the same Court, who shall proceed thereupon, in such manner as

by this Act is directed concerning writs issuing during the vacation.

In all cases, although the return shall be good and sufficient in law, it shall be lawful for the justice or baron to proceed to examine into the truth of the facts set forth in such return; and if it shall appear doubtful to him whether the material facts set forth in the said return be true or not, he may let to bail the person so confined, upon his entering into recognizance with one or more sureties, or in case of infancy or coverture, or other disability, upon security by recognizance, in a reasonable sum, to appear in Court upon a day certain in the term following, and so from day to day as the Court shall require, and to abide such order as it shall make.

The like proceeding may be had in the Court for controverting the truth of the return, although such writ shall be awarded by the Court itself, or be returnable therein.

A writ of *habeas corpus*, according to this Act, may run into any county palatine, or cinque-port, or other privileged place, within England, Wales, Berwick-upon-Tweed, Jersey, Guernsey, and Man, and also into any port harbour, road, creek, or bay, upon the coast of England or Wales, although the same shall lie out of the body of any county: and if in Ireland, the same may run into any port, harbour, road, creek, or bay, although the same should not be in the body of any county.

By the 31 Charles II. c. 2, (the Habeas Corpus Act) it is enacted—

1. That, on complaint and request in writing by or on behalf of any person committed, and charged with any crime, (unless committed for treason or felony, expressed in the warrant, or as accessary, or on suspicion of being accessary before the fact to any petit treason or felony; or upon suspicion of such petit treason or felony, plainly expressed in the warrant; or unless he is convicted or charged in execution by legal process,) the Lord Chancellor, or any of the twelve judges in vacation, upon viewing a copy of the warrant, or affidavit that a copy is denied, shall (unless the party have neglected for two terms to apply to any Court for his enlargement) award a *habeas corpus* for such prisoner, returnable immediately before himself or any other of the judges; and upon the return made, shall discharge the party, if bailable, upon giving security to appear and answer to the accusation in the proper court of judicature.

2. That such writs shall be indorsed, as granted in pursuance of this Act, and signed by the person awarding them.

3. That the writ shall be returned, and the prisoner brought up within a limited time, according to the distance, not exceeding in any case twenty days.

4. That officers and keepers neglecting to make due returns, or not delivering to the prisoner or his agent, within six hours after demand, a copy of the warrant of commitment, or shifting the custody of a prisoner from one to another (without sufficient reason or authority specified in the Act), shall for the first offence forfeit £100, and for the second offence £200, to the party grieved, and be disabled to hold his office.

5. That no person, once delivered by *habeas corpus*, shall be recommitted for the same offence, on the penalty of £500.

6. That every person committed for treason or felony shall (if he require it) the first week of the next term, or the first day of the next session of Oyer and Terminer, be indicted in that term or session, or else admitted to bail; unless the king's witnesses cannot be produced at that time: and, if acquitted, or if not indicted and tried in the second term or session, he shall be discharged from his imprisonment for such imputed offence. But no person, after the assizes shall be open for the county in which he is detained, shall be removed by *habeas corpus* till after the assizes are ended, but shall be left to the justice of the judges of assize.

7. That any such prisoner may move for and obtain his *habeas corpus*, as well out of the Chancery or Exchequer, as out of the King's Bench or Common Pleas; and the Lord Chancellor or judges denying the same, on sight of the warrant, or oath that the same is refused, forfeit severally to the party grieved the sum of £500.

8. That this writ of *habeas corpus* shall run into the counties palatine, cinque-ports, and other privileged places, and the islands of Jersey and Guernsey.

9. That no inhabitant of England, (except persons contracting, or convicts praying to be transported: or having committed some capital offence in the place to which they are sent) shall be sent prisoner to Scotland, Ireland, Jersey, Guernsey, or any place beyond the seas, within or without the king's dominions; on pain that the party committing, his advisers, aiders, and assistants, shall forfeit to the party grieved a sum not less than £500, to be reco-

vered with treble costs, shall be disabled to bear any office of trust or profit, shall incur the penalties of *præmunire*, and shall be incapable of the king's pardon.

This important statute extends (we may observe) only to the case of commitments for such criminal charges as can produce no inconvenience to public justice by a temporary enlargement of the prisoner; all other cases of unjust imprisonment being left to the *habeas corpus* at common law. But even upon writs at the common law it is now expected by the Court, agreeably to ancient precedents and the spirit of the Act of Parliament, that the writ should be immediately obeyed, without waiting for any *alias* or *pluries*; otherwise an attachment will issue. By which admirable regulations, judicial as well as parliamentary, the remedy is now complete for removing the injury of unjust and illegal confinement.

Besides the efficacy of the writ of *habeas corpus* in liberating the subject from illegal confinement in a public prison, it also extends its influence to remove every unjust restraint of personal freedom in private life, though imposed by a husband or a father; but when women or infants are brought before the Court by a *habeas corpus*, the Court will only set them free from an unmerited or unreasonable confinement, and will not determine the validity of a marriage, or the right of the guardianship, but will leave them at liberty to choose where they will go; and if there be any reason to apprehend that they will be seized in returning from the Court, they will be sent home under the protection of an officer. But if a child be too young to have any discretion of its own, then the Court will deliver it into the custody of its parent, or the person who appears to be its legal guardian.

If an equivocal return be made to a *habeas corpus*, the Court will immediately grant an attachment.

The satisfactory remedy for this injury of false imprisonment is by an action of trespass *vi et armis*, usually called an action of false imprisonment; which is generally, and almost unavoidably, accompanied with a charge of assault and battery also; and therein the party shall recover damages for the injury he has received; and also the defendant is, as for all other injuries committed with force, or *vi et armis*, liable to pay a fine to the king for the violation of the public peace.

The mode of applying for the writ of *habeas corpus* will be hereafter given.

LAW OF LIEN.

LIEN is a law term of two significations, *viz. personal lien*, such as a bond, covenant, or contract; and *real lien*, such as a judgment in an action, a statute, or recognizance, which oblige and affect the land.

It further signifies an obligation, tie, or *claim* annexed to, or attaching upon any property, without satisfying which, such property cannot be demanded by its owner. Thus the costs of an attorney are a lien upon deeds and papers in his hands; a factor has a lien on goods in his hands for balance due from his principal. Every one, whether attorney or not, has, by the common law, a lien on the specific deed or paper delivered him to do any specific work or business upon; but not on other papers of the same party, except he be an attorney. A banker has a lien for the amount of his balance upon securities, such as bills or checks, paid in by a customer on his running account. A printer has a general lien upon the copies of a work not delivered, for any balance due to him.

The lien of a common carrier for his general balance, however it may arise in point of law from an implied agreement, to be inferred from a general usage of trade, proved by instances sufficiently numerous and general to warrant so extensive a conclusion, affecting the custom of the realm; yet it is not to be favoured, nor can it be supported by a few recent instances of detention of goods by four or five carriers for their general balance: but such a lien may be inferred from evidence of the particular words of dealing between the respective parties.

By 1 Wm. IV. cap. 68, mail contractors, coach proprietors, and other carriers for hire, are not liable for the loss of certain goods *above* the value of *ten* pounds unless *delivered as such*, and the extra charge accepted. Whenever any parcel shall be delivered, as of *more* value than ten pounds, an increased rate of charge may be demanded; but *notice* of this regulation must be *affixed* in the offices or warehouses; and the *carriers* must also give *receipts* acknowledging the increased rates. If they do not give such receipts, they are not liable to the protection of the act; and even the publication of notices does not limit the liability of the carriers in respect of goods *not exceeding* ten

pounds in value. It is also provided that *every office* that is *used*, is to be deemed a receiving house, and any one coach proprietor or carrier is liable to be sued. The Act, however, does not affect *contracts* in any way; and though parties entitled to damages for loss, may also recover back *extra* charges, the proprietors or carriers are *only* liable to such damages as may be *proved for*; and they may pay money into court, in all actions for loss of goods; when, if the parties suing go on with proceedings instead of taking the money out of court, and do not recover *more* than was paid in, they will *lose their costs*. Nothing in this statute extends to *felonious* acts; and carriers, &c. are still liable to make good the value of any property that may be *stolen* while in their custody.

The master of a ship has no lien upon it for money expended, or debts incurred by him for repairs done to it on a voyage.

In general, to establish a lien, a claimant must be *in possession*; he must have some *unsatisfied demand*, and this must be grounded on some *general* or *special custom*, or by *agreement*.

A *voluntary* parting with the property will destroy the lien, but parting from *necessity* does not: so an innkeeper does not lose his lien upon the horse of his guest by putting him out to pasture; and if the owner of a horse wrongfully take him from an innkeeper, who has a lien upon the horse, the innkeeper may make fresh pursuit after him; but if he does not make fresh pursuit, he cannot retake it.

Parting with any property by *mistake*, does not destroy the lien: so if a person have a lien upon a lease, and deliver the lease to be sold under an execution, which is invalidated by a previous act of bankruptcy, he does not lose his lien.

If a vendor of goods have *unconditionally* delivered the whole of the goods sold, he is divested of his lien upon the whole or any part remaining in the actual possession of the vendor; but if the delivery were *conditional*, and the condition be not performed, he has a lien on such part as is in his actual possession; for when possession is taken by a buyer of *part* of the goods sold by an *entire contract*, possession is legally taken of the whole; but if any thing remain to be done on the part of the seller, before the commodity purchased is to be delivered, a complete right of property does not vest in the buyer, but the seller retains his lien.

The possession of a lien does not, in *general*, give a right to sell the property detained. Where keeping the goods is not attended with expense, a lien does not give a right to sell; and, generally, an innkeeper cannot sell a horse to pay himself; but by the custom of London he may, when he is likely to consume his value; but if goods are deposited by way of security for a loan, the lender may, upon default of payment, sell the goods.

Where a person has a lien by the act of the party, he may use it as the owner would; as a horse, or an ox, or milking a cow, unless it would be worse for usage, such as clothes, &c. which must not be worn.

Where a client is bound to produce a deed for a third person, the solicitor who has a lien upon it is also bound to produce it for the benefit of such person.

The *finder* of property lost or mislaid has no lien upon it for any *voluntary* expense he may incur, or for any compensation he may even reasonably deserve. The finder of a horse has *no* lien upon it for his expenses; nor has the finder of a dog any lien upon it for its keep; but a person who by his own labour preserves goods, which the owner, or those entrusted with the care of them, have either abandoned in distress at sea, or are unable to protect or secure, *has* a lien upon the goods for a proper compensation for his trouble.

A lien may be created by agreement, where no general lien exists by the operation of the law; as if a number of tradesmen, not compellable to receive goods, agree not to receive goods to be manufactured in the course of their trade, unless upon express condition that there shall be a lien upon the goods, not only for the debts accruing in the execution of the purpose for which the goods were entrusted, but also for the *general balance* due from their employers for work and labour of the same kind performed upon goods which have already been delivered out of their possession; such agreement is valid and obligatory upon those employers *who have notice of it*, and the same agreement may be made by an individual.

Liens by *agreement* are also sometimes *implied*; as *continued dealings* between parties, on the ground that they have a lien for a general balance, is evidence that *subsequent* dealings between the same parties are upon the *same ground.*

A *lien* may be *waived*, either by express agreement or by *implied* agreement, in consequence of any previous agreement inconsistent with the nature and law of lien, or by

taking security; or by taking the thing for a *particular purpose*, in which case the lien is *waived;* for if a person entitled to a *general* lien, receive goods for a particular purpose, he has not his *general* lien on such goods.

There are liens which exist only in *equity;* but there is no difference between the rules of *decision* in Courts of Law and in Courts of Equity, respecting liens on the goods of one man in the possession of another; and a Court of Equity will relieve in a case where there is a lien at law, if, from any difficulty attendant upon it, the parties are unable to obtain justice at law.

The vendor of an estate has an equitable lien upon it, for any part of the purchase-money which is unpaid, against all persons, except a purchaser for a valuable consideration *without notice.*

The buyer has also an equitable lien, where he has paid money prematurely upon the estate, for the amount which he has so paid.

If goods be delivered to a factor for sale, and the factor accept bills for the principal upon the credit of such goods, and an extent is issued against the principal, and the goods in the factor's hands are seized by the sheriff, the factor has a lien upon the purchase-money even against the crown.

LAW OF AWARD.

An award is a mode by which parties may refer any matter in dispute between them to the private decision of another party, (whether one or more persons): the party to whom the reference is made is the arbitrator; and, in case of difference, when the reference is made to more parties than one, another, named an umpire, is called in to decide.

The agreement of the parties to refer is called a *submission*, and may be by their own act, or by the interposition of a court of justice. In either case, it may be either verbal or in writing, but the safer and more general practice is to prefer the latter; which is done by mutual bonds in a certain sum penal, on condition to be void on the performance of the award.

In articles of partnership, it is usual to insert a clause that all disputes shall be referred to arbitration; and this

prevents either party from suing at law, or in equity, without having first had an actual reference which has proved ineffectual, or there has been a proposal by the plaintiff to refer, and a refusal by the defendant.

It has recently become the practice to refer actions upon disputed mercantile accounts, by consent of the parties, under a rule of *nisi prius;* the decision being afterwards made a rule of Court, out of which the record proceeds, and the performance of the award is enforced by process of contempt.

It is proper to fix a time within which the arbitrators shall make their award, but where none is specified, a reasonable time will be inferred; and a fixed time may be always enlarged upon application to Court, and sometimes the arbitrator is himself authorised to take such further time as may be necessary.

Persons who are capable of making a disposition of their property, or a release of their rights, may make a submission to an award; but no one can do so, who is under a natural or civil incapacity of contracting. Guardians, however, may submit to awards for infants; and if a man authorise another on his behalf to refer a dispute, the award is binding upon the principal alone, unless the agent binds himself for the performance of his principal.

Where there are two on one side, though they will not be bound the one for the other, yet, if the award be general that they shall do one entire thing, both will be respectively bound for the performance of the whole.

An award creates a duty which survives to executors or administrators, who are bound to the performance if made against their testator or intestate; as they, on the other hand, may take advantage of it, if made in his favour.

All kinds of personal wrong, the compensation for which is always *uncertain,* depending on the verdict of a jury, may be submitted to arbitration; except where the injury done to the individual is merged in some public crime, which can never be the subject of arbitration.

Since the introduction of references at *nisi prius,* the arbitrator has a jurisdiction over the *costs* of the action, as well as over the subject of the action itself, unless some particular provision is made to the contrary, in the form of submission to reference; but, instead of ascertaining the costs, the arbitrator may refer them to be taxed by the proper officer of the Court, though to no one else; and when it is agreed that costs shall abide the event, it means the *legal* event. The arbitrator may award damages to either party,

though, in point of law, there was no cause of action; and if the arbitrator takes no notice of the costs, but awards mutual releases, it is presumed he meant each party to pay his own.

An award must be consistent with the terms of the submission to reference, and ought not to be of a *part* only of the things submitted; but this must be understood with some limitation; for if the words of the reference be more comprehensive than those of the award, yet, if it does not *appear* that any thing else was in dispute between the parties beside what is comprehended in the award, it will be good; as it is the business of the parties aggrieved to know their own particular grievances, and show their causes of controversy to the arbitrator, he being a stranger, and only knowing matters that are laid before him.

An award cannot extend to any one who is not a party to the submission to reference; and it is void if it be to do any thing which is against law, or if it command any thing impossible to be performed by the parties who are affected by it. Neither must an award be *unreasonable*, nor command the performance of an act by which the party may subject himself to an action from another.

An award must also be *certain*, *final*, and *mutual*, but on these points awards are always liberally construed; the rules that govern their construction being that they shall be interpreted as deeds, according to the *intention* of the arbitrators, and the parties submitting to arbitration.

It is not in all cases absolutely necessary that performance shall be exactly in the words of the award, if it be substantively and effectually the same, it is sufficient; and if the party in whose favour the award is made, *accept* of a performance differing in circumstances from the exact letter of the award, that is sufficient.

The remedy to compel the performance of an award is as various as the various forms of submission to reference, and must be pursued accordingly.

An agreement to enlarge the time for making an award must contain a *consent that it shall be made a rule of Court*, or no attachment will be granted for not performing an award made under it.

Applications to *set aside* award, even for objections appearing on the face of them, must be made *before the last day of the next term* after such arbitration is made and published to the parties; but a Court of Equity may relieve, on manifest grounds, *after the time* required by the

9th and 10th of Wm. III. c. 15, for complaint, though no such complaint is made at all in the common law courts; and, even since the above statute, it is competent to either party, *before the submission is made a rule of Court* to revoke his submission by deed, and notify the same to the arbitrators before the authority is executed.

Where the submission is by reference at *nisi prius,* there is *no time limited* for making an application to *set aside* an award for *any cause;* but when the submission is under the 9th and 10th of Wm. III. no application can be made to have the award set aside, till the submission be actually made a rule of Court, which may be either before or after making the award.

When submission to reference is the mere act of the parties, the defendant is not permitted to impeach the conduct of the arbitrators, in defence to any action on the award or submission bond; and in such a case, the only relief is in Equity; but a Court of Equity will not set aside an award on a *voluntary* submission, or by order of *nisi prius,* except for corruption or improper conduct in the arbitrators; or where the award appears on the face of it, to be contrary to the rules of Equity, as to the prejudice of an infant, &c.; and a Court of Equity will *not* entertain a bill to relieve against an award for corruption or partiality, unless the Court of Law has not afforded that relief on application, or unless the time for complaining at law under the statute has elapsed.

In bills to have an award set aside for corruption or partiality, it is usual to make the arbitrators defendants, together with the party in whose favour the award is made. The arbitrators may plead the award in bar, but they must show themselves impartial, or the court will make them pay costs.

The most frequent subject of complaint against an award, is the *misconduct* of the arbitrators, and when the complaint is made out, it is generally successful; as if one of the arbitrators unjustly exclude the rest from the award, or hold private meetings with one of the parties, or manifest any undue partiality.

A plain *mistake* as to law or fact, or any *interest* of the arbitrator in the subject of reference, or the concealment of any fact from an arbitrator, which he declares would have produced an alteration in his opinion, is sufficient to set aside an award.

The following is the form of an arbitration bond, on a reference to two, with a clause of umpirage.

"Know all men by these presents, that I, C. D. of , am held and firmly bound to A. B. of , in pounds of good and lawful money of Great Britain, to be paid to the said A. B., or his certain attorney, executors, administrators, or assigns, for which payment well and truly to be made, I bind myself, my heirs, executors, and administrators, firmly by these presents, sealed with my seal. Dated the day of , in the year of the reign of our Sovereign Lord, William the Fourth, by the grace of God of the United Kingdom of Great Britain and Ireland, King, Defender of the Faith, and in the year of our Lord 1833.

"The condition of this obligation is such, that if the above bounden C. D., his heirs, executors, and administrators, and every of them, do and shall, for his and their part and behalf, in all things well and truly stand to, obey, abide, observe, perform, fulfil, and keep the award, order, arbitrament, final end and determination of E. F., of and G. H., of , arbitrators indifferently named, elected, and chosen, as well by and on the part and behalf of the above bounden C. D., as of the above-named A. B., to arbitrate, award, order, judge, and determine of and concerning all and all manner of action and actions, cause and causes of action, suits, bills, bonds, specialties, judgments, executions, extents, quarrels, controversies, trespasses, damages, and demands whatsoever, both at law and in equity, at any time or times heretofore had, made, moved, brought, commenced, sued, prosecuted, done, suffered, committed, or depending by and between the said parties, so as the said award be made in writing on or before the day of now next ensuing; but if the said arbitrators do not make such their award of and concerning the premises by the time aforesaid, then, if the said C. D., his heirs, executors, and administrators, do and shall, for his and their part and behalf, in all things well and truly stand to, obey, abide, observe, perform, fulfil, and keep the award, order, arbitrament, umpirage, final end and determination of I. K., of , a person indifferently named and chosen as an umpire between the said parties, of and concerning the premises so as the said umpire do make his award and umpirage in writing, of and concerning the premises, on or before the day of now next ensuing, then this obligation to be void, or else to remain in full force and virtue. And the said C. D. doth consent and agree that his submission to the award or umpirage above mentioned

shall be made a rule of his Majesty's Court of King's Bench at Westminster, pursuant to the statute in such case made and provided.

"(Signed) C. D. •

"Sealed and delivered, being first duly stamped, in the presence of

(Signed) "M. N. } Witnesses."
"O. P. }

An affidavit must be made of the due execution of this bond, and the arbitrators must make an appointment of a third person to act as arbitrator in case of their disagreement.

The following is the form of a judge's order of reference to a single arbitrator, which is the usual mode of referring ordinary cases.

B. v. D. } Upon hearing the attorneys or agents on both sides, and by their consent, I order that all matters in difference in this cause be referred to the award, order, arbitrament, final end and determination of E. F. of , so as he shall make and publish his award in writing, of and concerning the premises, on or before the day of next. And, by the like consent, I order that the costs of this action shall abide the event of his award; and that the costs of such reference shall be in the discretion of the said arbitrator. And, by the like consent, I order that the parties and their respective witnesses may be examined by the said arbitrator upon oath, to be sworn before any judge of the Court of King's Bench, or a commissioner for taking affidavits in the said Court; and that the parties shall produce before the said arbitrator all books, papers, and writings, in their custody or power, touching the matters in question. And, by the like consent, I order that if either of the said parties shall wilfully prevent the said arbitrator from making an award, such party shall pay such costs to the other as the said arbitrator shall think just. And, by the like consent, I do further order, that the plaintiff shall be entitled to enter up judgment as of next term, for such sum (if any) as shall be awarded due to the plaintiff by the said arbitrator. And, by the like consent, I do, lastly, order that this order shall be made a rule of the Court of King's Bench, if the same Court shall so please. Dated the day of 1832. TENTERDEN.

There is, however, some caution to be observed in submitting an action to reference, and thereby substituting the arbitrator in the place of the judge and the jury; and this caution is the more requisite, as it is a common practice to refer cases, in such instances, to very young barristers, often to those who have very little other practice, and, as it will sometimes happen, to persons of very little talent; so that, if there is any difficulty in the matter, there is more than a possibility of a wrong decision. It is, therefore, advisable *not to consent to refer*, when any question of *liability to pay* is involved; and to refer only when the point is merely *how much* of a disputed account is in question.

The following is a usual form of award, on submission to reference:—

"To all people to whom this present writing indented of *award* shall come, greeting. Whereas there are several accounts depending, and divers controversies and disputes have lately arisen between A. B., of, &c. gentleman, and C. D. of, &c. all which controversies and disputes are chiefly touching and concerning, &c. And whereas, for the putting an end to the said differences and disputes, they the said A. B. and C. D. by their several bonds or obligations, bearing date, &c. are become bound each to the other of them, in the penal sum of, &c. to stand to, and abide the award and final determination of me, E. F. &c. (*or*, of us, E. F., G. H., &c.) so as the said award be made in writing, and ready to the said parties in difference on or before, &c. next, as by the said obligations, and the conditions thereof, may appear. Now know ye, that I (*or* we), the said arbitrator, whose name is hereunto subscribed and seal affixed, taking upon myself (*or* us) the burthen of the said award, and having fully examined and duly considered the proofs and allegations of both the said parties, do, for the settling amity and friendship between them, make and publish this our award, by and between the said parties, in manner following, that is to say, First, we do award and order that all actions, suits, quarrels, and controversies whatsoever, had, moved, arisen, or depending between the said parties in law or equity, for any manner of cause whatsoever, touching the said, &c. to the day of the date hereof, shall cease and be no further prosecuted, and that each of the said parties shall pay and bear his own costs and charges, in anywise relating to or concerning the said premises. And we do

also award and order, that the said A. B. shall pay, or cause to be paid to the said C. D. the sum of within the space of , and also, at his own costs and charges, do, &c. And we do award and order, that, &c. And, lastly, we do award and order, that the said A. B. and C. D. on payment of the money above-mentioned, shall, in due form of law, execute each to the other of them general releases, sufficient for the releasing by each to the other of them, his executors and administrators, of all actions, suits, arrests, quarrels, controversies, and demands whatsoever, touching or concerning the premises aforesaid, or any matter or thing thereunto relating, from the beginning of the world until the day of, &c. last.

"In witness, &c."

The following clause of the 9th and 10th Wm. III. c. 15, it is material should be well known.

"That it shall and may be lawful to and for all traders and merchants, and others, desiring to end by arbitration any controversy, suit, or quarrel, for which there is no other remedy but by personal action, or suit in equity, to agree that *their submission of their suit to the award or umpirage of any person or persons should be made a rule of any of His Majesty's courts of record*; and to insert such their agreement in their submission, or the condition of *the bond or promise* whereby they oblige themselves respectively; which agreement being so made and inserted, may, on producing an affidavit thereof, made by the witness thereunto, or any one of them, in the Court of which the same is agreed to be made a rule, and on reading and filing the said affidavit in Court, be entered of record in such Court; and a rule shall thereupon be made by the said Court; that the parties shall submit to, and finally be concluded by the arbitration or umpirage, which shall be made concerning them by the arbitrators or umpire, pursuant to such submission; and, in case of disobedience to such arbitrator or umpirage, the party neglecting or refusing shall be subject to all the penalties of contemning a rule of court."

The reader is thus presented with a complete abridgment of the law on this important subject. Were it accurately attended to, and were the arbitrators uninfluenced by motives of partiality, *arbitration* would be a very desirable way of putting an end to many suits, instead of affording grounds for new proceedings, as they now too frequently do. As it is, the subjects most proper for arbitration are "*long and*

intricate accounts; disputes of a trifling nature, which it is of little importance to the parties in whose favour the decision may be given, provided at all events there be a decision; and questions on which the evidence is so uncertain, that it is much better to have a decision, whether right or wrong, than that the parties should be involved in continual litigation."

DIRECTIONS FOR CONDUCTING ACTIONS AT LAW.

In conducting a suit at law, there are two things principally to be attended to; first, the *res acta*, or thing done, or intended to be done, in the process of the cause; and, secondly, the *modus agendi*, or manner of doing it. And, with a view to the latter object, an adherence to certain requisite forms is essentially necessary. These, which are called *practical forms*, consist of writs and returns, entries, rules of court, petitions, summonses and orders, affidavits, notices, and demands; the nature and use of which will be made more familiar to the reader by a preliminary description.

Writs are either *original* or *judicial*. Original writs issue out of Chancery, returnable in the King's Bench or Common Pleas, and are calculated for the *commencement* or *removal* of actions. Original writs, for the *commencement* of actions in the superior courts, are the *præcipe quod reddat*, in actions of account, annuity, debt, and detinue; the *præcipe quod teneat*, in actions of covenants; and the *pone*, or *si te fecerit securum*, in actions of *assumpsit*, case, trespass, and ejectment.

In the County Court, actions are sometimes commenced by original writ of *justicies* or *replevin*. And causes are removed from inferior courts into the King's Bench or Common Pleas, *before* judgment, by original writ of *pone*, *recordari facias loquelam*, or *accedas ad curiam*; and, *after* judgment, by writ of error from courts of record, and by writ of false judgment from such as are not of record. An original writ of *certiorari* is also sometimes used for the removal of causes from inferior courts of record into Chancery, from which they are sent by *mittimus* to the King's Bench, or Common Pleas.

Judicial writs issue out of the court in which the action

is depending, and are of a *civil* or *criminal* nature. The former are either *mesne*, that is, such as are issued between the commencement and termination of the suit; or *final*, which are issued after judgment to obtain execution, or for other purposes. *Mesne* process, commonly so called, is used for bringing the defendant into Court, by summons, attachment, or *distringas*, or by *capias ad respondendum*, and process of outlawry, in actions commenced by *original* writ, in the King's Bench or Common Pleas; by bill of Middlesex, *latitat*, or *alias*, or *pluries capias* in the King's Bench; by *capias quare clausum fregit*, in the Common Pleas; or by *venire facias ad respondendum*, *subpœna ad respondendum*, or *quo minus* in the Exchequer. In actions at the suit of *attorneys* and officers of the Court, the defendant is brought in by attachment of privilege; and, in actions against *peers* and *members* of the House of Commons, by summons or attachment, and *distringas*.

Under the head of *mesne* process, may also be classed the writ of *inquiry*, for assessing damages on a judgment by default, or on demurrer, or *nul tiel* record, in actions of assumpsit, &c.; the process for convening the jury on a trial, commonly called the jury process, consisting of the *venire facias* and *distringas*, in the King's Bench or Exchequer, or *habeas corpora juratorum*, in the Common Pleas; the *subpœna ad testificandum*, for compelling the attendance of witnesses; and the *mittimus* for sending the record for trial into a county palatine. There are also certain forms *dependant* upon *mesne* process, for bringing the defendant into Court; such as the sheriff's *warrant*, to summon or attach a defendant, or distrain his goods, on process by *original* writ, or to arrest him on process against his person; the sheriff's mandate to a bailiff of a liberty, when the defendant resides within a peculiar jurisdiction; or the writ issued by a superior of a county-palatine, directed to the sheriff; to which may be added, the *bail bond* taken by the sheriff on an arrest, and the *assignment* of it to the plaintiff.

Final process is, first, by *fieri facias*, against the goods and chattels of the defendant; secondly, by *capias ad satisfaciendum*, against his person; thirdly, by *eligit* against his goods and a moiety of his lands; fourthly, by *levari facias*, against his goods and the profits of his lands; and fifthly, by *extent*, which is either against his body, lands, and goods, or an *extent* in *chief*, or in *aid*, or on a *statute staple*, or *recognizance* in nature of a *statute staple*;

against his lands and goods, on a writ of *diem clausit extremum*, or statute merchant; or against his lands only, upon a judgment in debt against an heir, on the obligation of his ancestor. And to this head may be referred the writ of *scire facias*, for having execution on a *recognizance* or *judgment*. It should also be observed, that causes may be removed from inferior courts, by a *judicial* as well as an *original* writ of *certiorari*, or by *habeas corpus*, and remanded by a writ of *procedendo*. The writ of *attachment*, which issues for the contempt of court, is of a *criminal* nature.

Writs are in general obtained, as a matter of course, by applying for them with what is called a *præcipe*, or note of instructions to the proper officer; and, in describing the nature of the cause of action in bailable process, a clause of *ac etiam* is inserted in the bill of *Middlesex*, or *latitat*, &c. in the King's Bench, or *capias quare clausum fregit*, in the Common Pleas, containing the true cause of action, in addition to the general complaint of trespass. When writs are returnable, the sheriff, or other officer to whom they are directed, may be called upon by *rule of court* to *return them*: and his *return* is either indorsed on the writ, or contained in a schedule annexed thereto, which commonly happens when he returns an *inquisition* on a writ of inquiry, *elegit*, extent, or *capias ut lagatum*, or when the proceedings are returned from an inferior court. Writs remain in the custody of the sheriff, or other officer to whom they are directed, until a return is called for; and then they are returned and filed, with the proceedings which have been had under them.

Entries of record are memorials of the proceedings and acts of the Court, and are made on parchment rolls, being denominated according to the subject matter of them, the warrant of attorney roll, the process roll, the recognizance roll, the imparlance roll, the plea or issue roll, the judgment roll, the *scire facias* roll, and the roll of proceedings on writs of error and false judgment; to which may be added, the rolls of deeds, awards, &c.

In the King's Bench, the warrants of attorney are entered on the top of the respective *plea* rolls to which they belong. In the Common Pleas, they are entered by the clerk of the warrants on distinct rolls, and filed with the common rolls in that Court.

The entries on the *process* roll are either of the proceedings on a writ of *error*, or motion to reverse an *outlawry*; or where a writ is sued out to avoid the Statute

of Limitations. The former are made by the *filacer*, who acts as *exigenter* and clerk of the *outlawries* in the King's Bench; the latter, as well as the process of outlawry, &c. in the Common Pleas, are made by the plaintiff's attorney, or clerk in Court. Where a writ is sued out to avoid the Statute of Limitations, the entry is made of the term it is made returnable. In the King's Bench, the bill of Middlesex, or latitat, &c. is entered on the roll *in hæc verba*; after which the roll proceeds with an entry of the plaintiff's appearance, the sheriff's return of *non est inventus*, and continuances of the process from term to term, by *vice comes non misit breve*, to the term of declaration. In the Common Pleas or Exchequer, the roll merely contains a *recital* of the writ, with an entry of the plaintiff's appearance, sheriff's return, &c.

The entries on the recognizance roll are made by the *filacers*, in actions by original, in the King's Bench or Common Pleas; and by the plaintiff's attorney, or clerk in Court, in other cases. And in the King's Bench by *bill*, and also in the Exchequer, the recognizance of bail to the *action* is entered on the roll, after the bill or declaration of the term of which it is entitled. This roll first states the bill or declaration, after which the appearance of the defendant is entered, and then the recognizance. In actions by *original*, in the King's Bench or Common Pleas, the roll begins with a recital of the suit upon which the defendant was brought into Court; and in entering a recognizance of bail *in error*, there is a *memorandum* of its being brought into Court, and recorded by the Chief Justice.

There is no *imparlance* roll in the King's Bench or Exchequer; but in the Common Pleas, if a defendant be entitled to an imparlance, it is entered on a roll, which is made up of the term the writ is returnable, or bill filed; and contains an entry of the declaration or bill, and of the defendant's appearance thereto, with the prayer and grant of imparlance.

The *plea* or *issue roll* is made up by the plaintiff's attorney or his clerk in Court, of the term issue is joined in the Common Pleas and Exchequer, and also in the King's Bench by *bill*; but in the King's Bench by *original*, it is made up of the term of the declaration; or it may be entitled of the term issue is joined, as in actions by *bill*; and it is either an issue in *fact* or in *law*. In actions, by *bill* in the King's Bench, this roll contains the following particulars:—first, the term of which it is made up; secondly,

the warrants of attorney for plaintiff and defendant; thirdly, a *memorandum*, stating that on the first or some subsequent day in that term, if the declaration was then delivered, or otherwise in a former term generally, the plaintiff came into Court and exhibited his bill against the defendant, and found pledges for the prosecution of it; fourthly, a copy of the bill itself, omitting the pledges; fifthly, the appearance of the defendant in person, or by attorney, or guardian; sixthly, the plea of the defendant, without an imparlance, if it be of the same term with the declaration; and if it be merely of the general issue, a *similiter* thereto; or, if special, the plea and replication, &c., as in the paper-book. But if the plea be of a term subsequent to the declaration, it is preceded by a general entry of an imparlance, to the term of which it is pleaded, beginning thus,—"And now at this day, that is to say on next after in this same term, until which day the defendant had leave to imparl to the said bill, and then to answer the same," &c. And by the course of the King's Bench, continuances are never entered until the plea roll is made up, though the declaration was delivered several times before. The issue then concludes, if it be an issue in *fact*, triable by the *country*, that is, by a *jury*, with the award of the *venire facias*, or *mittimus* to a *county palatine*; or, if it be an issue in *fact*, triable by the *record*, by giving a day to inspect or produce it.

In actions by *original*, in the King's Bench, the *plea* or *issue roll* begins with the term and warrants of attorney, as in actions by *bill*, and then proceeds with a copy of the declaration, without any *memorandum*; after which it states the appearance of the defendant, and the plea and replication, &c., *if of the same term*, without an imparlance; but if the plea be of a different term, it is usual to enter imparlances specially, from term to term, between the declaration and the plea; but after plea pleaded, though the plaintiff has day to reply for several terms, yet no mention need be made on the roll of any imparlance or continuance.

In the Common Pleas, when an *original* writ is actually issued, or *bill* filed against an attorney or member of the House of Commons, and the defendant imparls to a subsequent term, the *plea* or *issue roll* begins with an *alias prout patet*, thus—"Elsewhere, as it appears in term last past, in roll, it is thus contained;" and after which the *imparlance* roll is copied, and then the plea and replication, &c.; but if, as is more commonly the

case, the action is commenced without suing out an original writ, the *plea* or *issue* roll merely contains a copy of the declaration and pleadings, without any imparlance or continuance. And should it become necessary to sue out an *original* writ, in consequence of a writ of error after judgment by default, (which, however, seldom happens, as the defendant's attorney constantly undertakes, on taxing costs, not to assign the want of it,) the *original* may be made returnable of the term the issue is made up, which will be sufficient to support the proceedings.

In the Exchequer, the *plea* or *issue* roll begins with the *placita*, or style of the Court, of the term issue is joined; after which, if it be an issue of the same term, it merely contains a transcript of the pleadings, beginning each with a new line, without any *memorandum* or imparlance; but if it be an issue of a different term, the bill or declaration is prefaced with a *memorandum*, stating the term in which it was exhibited, and there is a general entry of imparlance before the plea; but there is no occasion for any imparlance or continuance between the plea and replication.

In an issue in *law*, the *plea* or *issue* roll is made up as on an issue in *fact*, substituting the demurrer and joinder for the plea or replication, &c. and concludes with a continuance by *curia advisari vult*.

The *judgment* roll is either on an issue in *fact* or in *law*; or upon the defendant's confessing the action, or letting judgment go by default; or on a *non pros*, *nolle prosequi stet processus*, or judgment, as in case of a nonsuit. On an issue in *fact*, or in *law*, the *judgment* roll is merely a continuance of the proceedings, on the *plea* or issue roll; and if that roll has been already carried in, the subsequent proceedings must be entered thereon by the clerk of the treasury in the King's Bench; or, whether it has been carried in or not, by the clerk of the judgments, who has the custody of the *postea* in the Common Pleas. On an issue in *fact*, triable by the *country*, if the cause be tried the same term issue is joined, or in the following vacation, the proceedings are continued by an entry of the jury being respited, before the king or his justices, until the return of the *distringas*; at which day, the appearance of the prevailing party is recorded, and an entry made of the *postea*, which contains the verdict of the jury, whether general or special, nonsuit, or demurrer to evidence, &c. But if the cause be not tried the same term issue is joined, or in the following vacation, it is continued

to the term in or after which the trial takes place, by *vice comes non misit breve*. These continuances were formerly entered on separate rolls in the Common Pleas, but they are now entered on the judgment roll. After the *postea*, if final judgment be given the same term, it is immediately entered; but if it be not given till a subsequent term, the cause is continued to the term of giving it, by writ of *curia advisari vult*. In a county palatine, an entry is made of the record being sent, with the *postea* indorsed upon it, by the justices before whom the cause was tried, on a day prefixed to the parties to be in Court to hear judgment.

On an issue in *fact*, triable by the record, the *judgment* roll proceeds, after the issue, with an entry of the appearance of the prevailing party, and the finding of the Court, that there is or is not such a record as alleged in the pleadings, or that the party alleging has produced or failed to produce it, upon which the judgment is given. On an issue in *law*, the appearance of both parties is usually recorded; and the judgment is founded on the determination of the Court, that the declaration or other pleading *is*, or *is not* sufficient. In either case, if the judgment be not entered the same term issue is joined, the cause is continued in the mean time by *curia advisari vult*. On a verdict or nonsuit the judgment is always *final*; but on an issue of *nul tiel record*, or upon *demurrer*, it is either *final* or interlocutory, according to the nature of the action; and if only interlocutory, the same proceedings are had thereon as on a judgment by default.

When the defendant does not plead to the action, but confesses it, or lets judgment go by default, there is of course *no plea* or *issue* roll; but the record proceeds, after the defendant's appearance, with an entry of the confession or default, and the judgment of the Court thereon. And in the King's Bench this entry is the same, whether the judgment be for want of a plea or for not rejoining, sur-rebutting, or joining in demurrer, or for not returning the paper-book; but in the Common Pleas, where the pleadings are supposed to be entered of record, as they are pleaded, the *judgment* roll states the previous proceedings, and the particular default upon which judgment is given. If the confession be after plea pleaded, it is called a *cognovit actionem relictâ verificatione*; and it sometimes happens, that after letting judgment go by default, the defendant confesses the amount of damages, to save the expense of executing a writ of inquiry. In these

cases, the confession is entered on the return of the *venire facias*, or award of inquiry. The judgment on a *cognovit actionem*, if accompanied with a confession of the amount of the damages, is always *final*; but by default merely, without such a confession, it is *final* or *interlocutory*, according to the nature of the action. In debt, the judgment by default is *final*; but in *covenant*, *assumpsit*, *case*, *replevin*, and *trespass*, it is only *interlocutory*; and the *judgment* roll in that case proceeds with the award of the writ of inquiry of damages, and the sheriff's return thereto, or with the assessment of them, when assessed by the Court, as on a bill of exchange or promissory note, after which final judgment is given. In the King's Bench by *bill*, or in the Common Pleas or Exchequer, judgments by default are entered on a roll of the term of which they are signed; but in the King's Bench by *original*, they are entered of the term of the declaration. In the Common Pleas, the entries are made by the clerk of the judgments, with whom the writ of inquiry is left for that purpose; and there is no necessity in that Court for a subsequent continuance between the parties, after judgment by default, and writ of inquiry awarded, but in the King's Bench it is said to be otherwise.

On a *non pros*, or staying of proceedings, the judgment is entered by the defendant's attorney or clerk in Court, of the term in which it is signed; and, after stating the previous proceedings, as on a *non pros*, for not declaring, the writ—for not replying, the declaration and plea—or for not entering the issue, the whole of the pleadings—the *judgment* roll contains an entry of the plaintiff's default, and the judgment of the Court thereon. A *nolle prosequi* is either that the plaintiff will not further prosecute his action generally, or that he will not prosecute the same as to part of the cause of action, or as to one of several defendants; and it may be entered in any stage of the proceedings. The *stet processus*, or judgment, as in case of a nonsuit, is entered at the foot of the *plea* or *issue* roll, by the clerk of the treasury in the King's Bench, or clerk of the judgments in the Common Pleas.

Incident to and dependant upon the proceedings which have been mentioned, there are others which are only entered occasionally on the *plea* or *issue*, and *judgment* roll. These are, 1. The *continuances*, which are either by *dies datus*, before declaration, by *imparlance* after declaration, and before issue joined; by *vice comes non misit breve* after issue and before verdict; and by *curia advisari vult* after

verdict or demurrer. 2. The *suggestion* of the parties; which are either of breaches on the statute 8 & 9 Wm. III, c. 11, sec. 8, of the death or promotion of the plaintiff or defendant, of the sheriff's being arrested, &c., for awarding the *venire facias* out of the common course, for judgment on the *Welch* judicature act, or for costs on a court of conscience act, &c. 3. The *relictâ verificatione*, where the defendant relinquishes his defence, after plea pleaded, and confesses the action. 4. The *unica taxatio*, where the taxation of damages is stayed after judgment by default against one of several defendants, or on demurrer, until the issue joined between the plaintiff and the other defendants, or the demurrer, is determined. 5. The *remittitur damna*, where damages are remitted by the plaintiff, all of which entries are made *before* judgment.

The entries made *after* judgment are, 1. The award of execution, by *fieri facias*, *capias ad satisfaciendum*, for the residue of the debt or damages, after part has been levied on a former writ. 2. The *committitur*, or commitment of the defendant in execution. 3. The *satisfaction* of the debt, or damages and costs; and, lastly, the proceedings on error *coram nobis*, or on error from the King's Bench to the Exchequer Chamber, or to the House of Lords directly; or after affirmance in the King's Bench, when the proceedings have been remitted.

The *judgment* roll contains *the body* of the record, so called in opposition to its *members* or *out-branches*. These are, first, the *original* writ, which is filed, with the *custos brevium*, in the treasury of the King's Bench or Common Pleas; secondly, the *bill* against *attorneys* and officers of the court, which is filed with the clerk of the declarations in the King's Bench, or prothonotaries in the Common Pleas; thirdly, the *bill* against *members* of the House of Commons, which is filed with the clerk of the declarations in the King's Bench, or filacers in the Common Pleas; fourthly, the *bill* against *prisoners* in custody of the marshal or sheriff, &c. which is filed with the clerk of the declarations in the King's Bench; fifthly, the *nisi prius* record in the King's Bench or Common Pleas, which, after the *placita*, contains a transcript of the pleadings and issues joined between the parties, ending with the *jurata*, and *sciendum*, except at the sittings in the King's Bench for *London* or Middlesex, where there is no *sciendum*; sixthly, the commission in the Exchequer, for authorising the trial of a cause at the assizes; seventhly, the *postea*,

which after being marked by the clerk of the common bails, is delivered in the King's Bench to the attorney for the prevailing party, but in the Common Pleas is left with the clerk of the judgments; eighthly, the *bill of exceptions*, which may be either tacked to, or separate from the record. The above, however, are not properly speaking *entries*, as they are not entered on the rolls of the courts.

In *scire facias*, the entry on the roll in the King's Bench begins with the term in which the writ is returnable; after which it alleges that the king sent to his sheriff of the county wherein the *scire facias* was brought, his writ closing in these words, (setting out the writ verbatim.) It then states the plaintiff's appearance and the sheriff's return, which is either *scire feci*, or *nihil habet*. In the latter case, an *alias scire facias* is awarded; and at the return of it the plaintiff's appearance is again stated, with the sheriff's return of *nihil habet;* upon which, if the defendant make default, execution is awarded for the debt or damages, or the sum acknowledged; but if the defendant or bail appear, on the return of the first or second *scire facias*, his appearance is entered with a prayer of execution, after which the pleadings are copied, with or without an imparlance, as in other cases. When two writs issue, returnable in different terms, the first must be entered of the term in which it is returnable, and an award of the second is sufficient, without setting it forth at large. In the Common Pleas, the entry on the roll begins with a recital of the writ, after which it proceeds as in the King's Bench, with the appearance of the plaintiff and the sheriff's return, &c. And in that Court, if there be two writs of *scire facias* returnable in different terms, there must be *two rolls*, one of the term the first writ was returnable, and the other of the term the second writ is returnable; on one of which rolls the first writ is entered, with the sheriff's return thereto, and an award of the second writ only; and the other roll, which begins with an *alias prout patet*, contains a copy of the former roll, with the addition of the return to the second writ, and the entry of the judgment of the Court.

On a writ of error, *coram nobis*, the proceedings are entered on the *same* roll as the original judgment, but on a writ of error from an inferior Court to the Common Pleas, or from the Common Pleas to the King's Bench, the entries are made on *different* rolls in the Court above, entitled of the term the writ of error is returnable, and

begin with the writ of error and return, after which the proceedings in the inferior court or Common Pleas are entered to the end of the final judgment. Then follows the judgment of *non pros*, for not assigning errors, or if they are assigned, the assignment of them; and if it be of errors in *fact*, the plea and replication are next entered, with the award of the *venire facias*; or if it be of errors in law, there is an entry of the joinder, with a continuance by *curia advisari vult*; after which the roll proceeds with the finding of the jury, or determination of the Court, and judgment of affirmance or reversal. On a writ of error from the King's Bench to the Exchequer Chamber or House of Lords, after the proceedings are remitted into the King's Bench, they are entered at the foot of the original roll in that Court; and if a writ of error be first brought in the Exchequer Chamber, and afterwards in the House of Lords, the proceedings in both are entered, after a *remittitur*, on the same roll.

Deeds and *awards*, &c. are entered in the bundle of *plea* rolls, in the King's Bench, and docketed under the head of *special memorandums*; but in the Common Pleas, they are entered by the clerk of the warrants, in the bundle of *pleas of law*.

Entries not of record are called *remembrances*, and are either entered on remembrance rolls, or in books kept by the different officers of the courts. Of this description are, first, the books kept by the masters of the King's Bench, or clerk of the warrants in the Common Pleas, wherein are entered in alphabetical order the names of the attorneys who have been admitted and have taken out their certificates; secondly, the remembrance rolls, kept by the signer of the bills of Middlesex, or of the writs in the King's Bench, in which are entered the *precipes* of bills of Middlesex, or *latitats*, &c.; thirdly, the remembrance rolls and books, kept by the *filacers* in the King's Bench or Common Pleas, on which are entered the *precipes* of writs, and *common* or *special* appearance by *original*; fourthly, the books kept by the clerk of the common bails in the King's Bench, wherein he enters alphabetically, by the defendant's surname, the common bails filed in London, Middlesex, and the country *separately*, with the days when they were respectively filed; these were formerly entered on parchment rolls, and by a modern regulation, the clerk is required to mark the bail pieces numerically, as they are received; fifthly, the books kept at the judge's chambers, wherein are entered

abstracts of bail pieces, exceptions to bail, and undertakings to pay costs on taxation, &c.; sixthly, the book kept by the clerk of the declarations in the King's Bench office, wherein he makes entries alphabetically, by the plaintiff's surname, of the bills and declarations filed with him; seventhly, the general issue book, kept by the clerk of the judgments in the King's Bench office, and the book kept at the judge's chambers, wherein are entered general issues in *ejectment;* eighthly, the book kept by the clerk of the papers in the King's Bench, wherein he enters special pleas filed with him, alphabetically, by the defendant's surname; ninthly, the prothonotaries' rolls, in which are entered *precipes* taken at bar on common recoveries, the admission of *prochein amis* and guardians, and the appearances and recognisances of bail, on attachments of privilege, &c.; tenthly, the books kept by the prothonotaries, wherein are entered the declarations filed and delivered out in the several causes passing through their office, with the subsequent pleadings between the parties, the money paid into and taken out of Court, the records passed for trial, the entries of issues joined between the parties, interlocutory judgments, and final judgments thereon, writs of inquiry, and execution, &c.; eleventhly, the books kept by the clerk of the rules in the King's Bench, and secondaries in the Common Pleas wherein are entered all *common* and *special* rules; twelfthly, the court books, kept by the clerk of the papers in the King's Bench, or prothonotaries in the Common Pleas, in which are entered the names of all causes on demurrers, special verdicts, and other matters which are to be argued in court, and of causes to be tried at bar, &c.; thirteenthly, the remembrance papers, of records passed by the clerks of *nisi prius* in the King's Bench, and the cause books kept at the chief justice's chambers, wherein causes are entered for trial at the sittings in London or Middlesex; fourteenthly, the book kept by the clerk of the judgments in the King's Bench, containing entries on the roll to save the statute of limitations, issues, interlocutory and final judgments, and writs of *scire facias;* fifteenthly, the marshal's book, also kept by the clerk of the judgments, wherein are entered surrenders and *committiturs;* sixteenthly, the book kept in the Prothonotaries' Office for docketing judgments; seventeenthly, *the docket roll,* or *common docket* of judgments in the Common Pleas; eighteenthly, the *docket* books, kept by the clerk of the dockets in the King's Bench, by the clerk of the essoigns

in the Common Pleas, and by the master of the office of Pleas in the exchequer, containing an alphabetical entry or docket, by the defendants' names, of all judgments entered in their respective Courts, pursuant to the statute of 4 and 5 Wm. and Mary, c. 20, sec. 2; and, lastly, the *memorial* of the judgment, which is required to be registered, where the defendant has lands in Middlesex or Yorkshire, in order to charge them. In the Exchequer, besides the bundles of *rolls*, and *files* of *bills* and *writs*, which are *records*, there are books of bails, appearances, orders, and dockets, which are *not* of record.

Rules of court are either common or special. *Common* rules, first, such as are given by the master in the King's Bench, and entered with the clerk of the rules, or are given by the clerk of the papers, or clerk of the errors. In the Common Pleas, all rules are given or drawn up by the secondaries, except rules for judgment on writs of *scire facias*, which are given by the prothonotaries; rules to declare in *replevin*, and to bring in the body, which are given by the filacers; and rules for better bail in error, or to certify the record, which are given by the clerk of the errors; secondly, such as are entered with the clerk of the rules in the King's Bench, or secondaries in the Common Pleas, on a *precipe* or note of instructions made out by the attorneys who apply for them, or on a judge's *fiat*, &c. and are not founded on any motion in Court, real or supposed; thirdly, such as were anciently moved for by the attorneys at side-bar, in the King's Bench, and are thence called *side-bar* rules. In the Common Pleas, they are supposed to be moved for by the secondaries at side-bar, on the first day of term, and in the Treasury Chambers on other days, and are therefore called in that Court, *side-bar*, or *treasury rules*; fourthly, such as are drawn up by the clerk of the rules in the King's Bench, or secondaries in the Common Pleas, without being moved in Court, or producing a motion paper, signed by a counsel or sergeant.

All rules that are applied for to the Court, are denominated *special* rules; and they are either absolute in the first instance, or only *nisi* to show cause. Of the former, some cannot be had without the consent of both parties; and the latter may be considered as they are moved for on behalf of the *plaintiff* or *defendant*. Rules in general operate upon the *proceedings*, by *setting aside*, *staying*, or *amending* them, or on the *parties* to the suit requiring something to be done by the party applying, or by the

opposite party for his benefit, or by the sheriff, or officers of the Court, &c. The application to the Court for *special* rules is made by *motion* or *petition;* the former is sometimes preceded by a *notice*, and is usually founded on an *affidavit* of the circumstances. Petitions are also used for other purposes; as to a judge at chambers, for *infants* to be admitted to sue by *next friends*, or defend by *guardian*, or for *paupers* to defend in *formâ pauperis;* or to the master of the rolls, for an original writ to be issued on a writ of error, after judgment by default, or to amend an original, &c.; and *fiats* are granted thereon for these several purposes.

The rules of the Courts are *not* considered as *records*, but only remembrances of their proceedings, and are filed, with the affidavits in support of them, in the office of the clerk of the rules in the King's Bench, or secondaries in the Common Pleas. In the Exchequer, all rules are given or drawn up by the master.

Summonses are granted, and *orders* made thereon, by the judges, and answer to the rules of Court; the former being in the nature of rules to shew cause, and the latter of rules absolute. In general, they are intended to regulate those less important matters, which are not altogether of course, but yet are not of sufficient moment to claim the attention of the Court, such as the allowance of further time to plead, &c. There are also certain forms depending on rules of court, or judge's orders; such as *interrogatories* and *depositions* on the former, and particulars of the plaintiff's demand, or defendant's set-off on the latter.

Affidavits are made by the parties to the suit, or their attorneys, &c. and are calculated to found or give effect to some proceeding in the course of the cause, or more commonly to obtain, or shew cause against a rule of court, or judge's order, though they are seldom used on applying for, or shewing cause against the latter. Of the *former* kind, are affidavits to hold to bail, for filing common bail, or entering a common appearance, of the truth of pleas in abatement, and of increased costs upon taxation, &c. Affidavits of the *latter* kind, or such as are used in Court, may be considered as they relate to the proceedings in actions in general, or to particular actions or modes of proceeding, or actions by or against particular persons. In point of *form*, they may be considered with reference to their title, contents, and *jurat.* In general they are sworn in Court, or before a judge, or baron in

town, or commissioner for taking affidavits in the country, or else, in the case of affidavits to hold to bail, before the officer who issues the process, or his deputy. When used in Court, they are filed with the clerk of the rules in the King's Bench, or secondaries in the Common Pleas; or otherwise with the judge or officer before whom they are used. Affidavits to hold to bail are filed with the officer who issues the process, or his deputy; affidavits of the service of process, with the clerk of the common bails, or the filacer; affidavits of the truth of pleas in abatement, with the clerk of the papers or prothonotaries; and affidavits of increased costs, with the master or prothonotary who taxes them. When an affidavit has been read and filed, it becomes a *record* of the Court, and cannot be taken off.

Notices are of something done, or intended to be done by the party giving them; such as notices of bail put in, or of an intention to bring an action, or move the Court, or proceed to trial, &c., or of something expected to be done by the other party, as to appear, plead, &c. *Demands* are of something required to be done by the opposite party, as of declaration or plea, or *oyer* and copy of deeds, &c. Notices and *demands* pass between the parties, or their attorneys, and are not filed or entered of record. There are also certain other acts of the parties, such as the *warrant of attorney* to confess judgment, and the *defeasance* thereon, *undertakings* of indemnity to the sheriff, or to pay the costs due to an attorney on taxation, &c.

There are also *forms* which are *peculiar* to *particular actions* and modes of proceeding, such as the actions of *replevin* and *ejectment*, which we have given at length in the Law of Landlord and Tenant; and in proceedings in *scire facias*, error, and *false judgment*, and others which relate to actions by or against particular persons, as *attorneys* and *prisoners*. Of the latter kind are *certificates* of gaolers, and schedules on the Lords' Act, &c. There are also some forms particularly applicable to the remedies or means of obtaining distress, without suit, by the mere act or agreement of the parties, as by *distress*, which proceeds from the act of the injured party only, or by *arbitration*, which is founded on the joint act or agreement of all the parties.

PRACTICAL DIRECTIONS

FOR BRINGING AN ACTION IN THE COURT OF KING'S BENCH IN BAILABLE ACTIONS.

In the King's Bench, previous to 2 Wm. IV. cap. 39, personal actions might have been commenced either by *original writ* or by *bill*, or at the suit of attorneys or other officers of the court by attachment of privilege. But at present the *only* process for the commencement of such action wherein it is intended to *arrest*, and hold a person to *special bail* (such person not being in the custody of the marshal of the marshalsea, of the Court, or of the warden of the Fleet prison) is a *writ of capias*.

In order to sue out the writ of capias, prepare your affidavit to hold to bail. This affidavit must be intituled, "In the King's Bench," but not in any cause. It must state the true place of abode, and the true addition or description of the person making it.

A party cannot be arrested or holden to bail unless affidavit of debt be previously made for £20 or upwards; and this affidavit must be filed *before* the writ issues. It is not necessary to be sworn by the creditor, but whoever makes the affidavit must swear *positively* to the debt, or cause of action. The affidavit must be certain and explicit, and intelligible in its terms, and must absolutely negative any tender of payment. Debt and assumpsit cannot be joined in the same affidavit, nor can it be against distinct defendants, as maker and indorser of promissory notes. Demands due to several plaintiffs cannot be joined in the same affidavit, which must also correspond with the process and declaration. Any variance in name is fatal, as William for James, is bad; although a mere mis-spelling, as Chorles for Charles, would not vitiate the instrument. The subject matter of the demand must be alleged to have arisen at the *defendant's request;* and affidavits to hold to bail for money paid to the use of the defendant, or for work and labour done, are *not sufficient*, unless they state the money to have been paid, or the work and labour done, to have been done at the request of the defendant. In the King's Bench, when a writ of capias issues upon affidavit, an office copy of

the same will authorise the issuing of a second into a different county; and a fresh affidavit is not necessary; but in the Common Pleas, if a second capias issues into a *second county*, there must be a *new affidavit* sworn before and filed with the filacer of the second county. Formerly, if a defendant was described by the *initials* of his Christian name only, or by a *wrong name*, the affidavit was bad; but now, a description by initials, or a wrong name, or without a Christian name, will not entitle a defendant to his discharge, or cancel the bail-bond, if it appear to the Court that *due diligence* has been used to obtain the knowledge of the proper name. Affidavits made in Scotland or Ireland, must be sworn before a magistrate competent to administer an oath, in the presence of a third party, who can prove the signature of the judge; and where no affidavit has been made *before* the arrest, or the affidavit is in any material respect defective, or not regularly filed with the proper officer, the Court will discharge the defendant on filing *common bail*, and even in some cases cancel the bail-bond. The following form will illustrate these propositions.

Affidavit of Debt by the Plaintiff.

In the King's Bench.

A. B. of , dealer and chapman, maketh oath and saith, that C. D. is justly indebted to this deponent in the sum of one hundred pounds sterling, for goods sold and delivered to this deponent, to the said C. D. and at his request. And this deponent further saith, that no offer has been made to pay the said sum of one hundred pounds, or any part thereof, in any note or notes of the Governor and Company of the Bank of England, expressed to be payable on demand.*

Sworn at the Bill of Middlesex Office, this day of 1833. } A. B.
——— (Officer's name).

If the affidavit be made by two or more persons, their names must be written in the jurat; and there must be no *interlineation* or *erasure* in the *jurat*, or the affidavit cannot be read, or made any use of; and if the deponent be an

* This is the usual form, but as the Bank Restriction Acts expired on the 1st of March, 1823, it is no longer absolutely necessary to negative a tender of the debt in *Bank notes*; but it may become so again by the operation of the new Act relative to the Bank Charter, by which Bank notes, in certain circumstances, may become a legal tender.

illiterate person, as appears from his making his *mark* instead of signing his name, the commissioner must certify in the jurat, "that the affidavit was *read over* to the deponent in his presence, and that the deponent seemed perfectly to understand the same, and made his mark in his presence;" and no affidavit (except an affidavit of debt to hold to bail) must be sworn before the attorney* of the party on whose behalf the affidavit is made. If these rules are not complied with, the affidavit will be useless, as it cannot be read or used in Court.

Then prepare the præcipe for the office in the following manner.

Middlesex (to wit). Writ of capias for A. B. against C. D. Case for £100, for goods sold and delivered, *(or as the case may be)*, returnable on next after

E. F. Attorney,
or,
A. B. Plaintiff in person.

Oath for £100, by affidavit filed.

Get next a blank writ of capias, (which may be had at the stationer's), according to the following form.

William the Fourth, by the grace of God of the United Kingdom of Great Britain and Ireland king, defender of the faith, to the sheriff of [*or*, to the constable of Dover Castle, *or*, to the mayor and bailiffs of Berwick upon Tweed, *or*, *as the case may be*], Greeting, we command you, [*or*, *if an alias*, "as before we have commanded you," *or*, *if a pluries*, "as often we have commanded you,"] that you omit not by reason of any liberty in your bailiwick, but that you enter the same, and take C. D. of if he shall be found in your bailiwick, and him safely keep until he shall have given you bail or made deposit with you, according to law in an action on promises, [*or*, of debt, &c.] at the suit of A. B., or until the said C. D. shall by other lawful means be discharged from your custody. And we do further command you, that on execution hereof, you do deliver a copy hereof to the said C. D. And we hereby require the said C. D. to take notice that within eight days after execution hereof on him, inclusive of the day of such execution, he should cause special bail to be put in for him in our Court of King's Bench to the

said action; and that in default of his so doing, such proceedings may be had and taken as are mentioned in the *warning* hereunder written or indorsed hereon. And we do further command you the said sheriff, that immediately after the execution hereof, you do return this writ to our said Court, together with the manner in which you shall have executed the same, and the day of the execution hereof; or that if the same shall remain unexecuted, then that you do so return the same at the expiration of four calender months from the date hereof, or sooner, if you shall be thereto required by order of the said Court, or by any judge thereof. Witness, [*name of chief justice*] at Westminster, the day of [*day of issuing the writ*] in the year of our reign.

This is the form prescribed by the statute before-mentioned; and in default of the defendant putting in special bail, or appearing, as the case may be, all such proceedings may be taken by the plaintiff as are expressed in the writ and warning, as contained in the succeeding memorandums.

The following Memoranda must be subscribed to the Writ.

N. B. This writ is to be executed within *four* calendar months from the date hereof, including the day of such date, and not afterwards.

A Warning to the Defendant

1. If a defendant being in custody shall be detained on this writ, or if a defendant being arrested thereon, shall go to prison for want of bail, the plaintiff may *declare* against any such defendant before the end of the term *next after* such detainer or arrest, and proceed thereon to *judgment* and *execution*.

2. If a defendant, being arrested on this writ, shall have made a deposit of money, according to the statute 7 and 8 Geo. IV. c. 71, and shall *omit* to enter a *common appearance* to the action, the *plaintiff* will be at liberty to enter a common appearance for the defendant, and proceed thereon to judgment and execution.

3. If a defendant having given bail on the arrest, shall

omit to put in *special bail* as required, the plaintiff may proceed against the sheriff, or on the bail-bond.

4. If a defendant, having been served only with this writ, and not arrested thereon, shall *not* enter a common appearance within *eight days* after such service, the *plaintiff* may enter a common appearance for such defendant, and proceed thereon to judgment and execution.*

* The statute *imperatively* requires *this form* should be adopted, and any material variation would, in some cases, render it void.

The writ may be directed to any sheriff or returning officer in England. In Wales, it must be directed to the sheriff of the county. In the counties palatine of Lancaster and Durham it also issues; but in Lancaster, it must be directed to *the chancellor*, or *his deputy*; and in Durham, to *the bishop*, or his chancellor, who afterwards severally issue their mandate thereupon to the sheriff, and the sheriff *executes* the writ. In *Berwick-upon-Tweed*, where it seems there is no *filacer*, the process is directed to *the mayor and bailiffs* of Berwick-upon Tweed; and in the *Cinque Ports*, the writ must be directed to the constable of Dover Castle, or his deputy. In the franchise of Ely, the writ is directed to the sheriff of Cambridgeshire, who thereupon issues his mandate to the bailiff of the franchise; and in any of these cases, if the writ, which should be directed to *the sheriff*, is directed to any *other person*, it is *void*; and any proceedings under it, will be considered as if no writ had been issued; but if the writ be directed to *the sheriff*, although it should have been directed to some *other* person, the *execution* will be *valid*, though the Court might afterwards quash it for irregularity.

Great care should be taken that the names of all the parties are inserted correctly in the writ; but if the defendant sign the bail-bond by the full name in which he is described (though erroneously) in the writ, he cannot obtain his discharge, or have the bail-bond cancelled, notwithstanding the plaintiff may not have used due diligence in ascertaining his proper name; but he may obtain his discharge, or have the bail-bond cancelled, if he sign it by his *real* name, and describe himself as sued by a *wrong* one, supposing due diligence has not been used by the plaintiff. If, however, he put in bail in his real name, the plaintiff may declare against him by such name, stating him to have been arrested in the other, and he cannot then plead in abatement; and where bail in such cases is put in in the right name, without the defendant stating at the time that he was arrested by the name in the process, the plaintiff may consider the bail as a *nullity*, and proceed against the sheriff on the bail-bond accordingly.

If a defendant be arrested in mesne process by a *wrong* name, he can maintain an action of false imprisonment against the sheriff, or others interfering in the arrest; but not if he is as well known by the name in which he is sued, as by his real name;—and the sheriff, or his officer, is not bound to execute mesne process, where the defendant is described by his wrong name.

It is not necessary to give in *the writ* any description of the *plaintiff's* residence; but such description must be given by an indorsement on the writ, when sued out by the plaintiff in person.

This writ of capias does not specify any particular or certain return day, as was usual in original writs, bills of Middlesex, and latitats; but the defendant must, within *eight days* after *the arrest*, put in special bail; but

This writ of capias must be indorsed with several memoranda, or notices, namely—

1. By 12 Geo. I. c. 29, s. 2, the sum specified in the affidavit to hold to bail, must be written on the back of the writ, and the sheriff must take bail for such sum and no more; and *the form* being prescribed by 2 Wm. IV. c. 39, renders it absolutely requisite. If the affidavit state the defendant is indebted in several sums, the total will be sufficient, as thus—

"Bail for £ , by affidavit."

If the arrest be on a judge's order, indorse in this manner—

"Bail for £ , by order of [*naming the judge making the order*] dated the day of [*date of order*]."

2. The writ must be indorsed with the *name and place of abode of the attorney* actually suing out the same; and if *no attorney* is employed, it must be indorsed with a memorandum stating that the writ has been issued out by the *plaintiff in person*, mentioning also the *city*, *town*, or *parish*, and also the name of the *hamlet*, *street*, and *number* of the *house* of such plaintiff in person's residence, if there be any such particulars to describe. Attorneys suing as agents for other attorneys in the country, must indorse

if the *last* of such eight days fall on Sunday, Christmas-day, or any day appointed for a public fast or thanksgiving, the *following day* is to be considered the last of such eight days; and if the last of such eight days fall on any day between the *Thursday before and the Wednesday after* Easter-day, then the Wednesday *after* Easter-day is considered the last of such eight days; and if the writ be executed on any day between the 10th of August and the 24th of October, the bail may be put in by the defendant at the expiration of such eight days; but *no declaration*, or pleading *after* declaration, can be filed or delivered between the 10th of August and the 24th of October. And the writ of capias, with any *alias* or pluries writ issued upon it, must be dated *the very* day it is *issued*, whether in term or vacation, or it might be set aside on application to the Court or a judge, within the time allowed for putting in bail, and *before* bail is put in; nor can the writ be executed at all after four calendar months from the day on which it is dated, *including* such day; but if there be not eight days remaining of the four months when the writ is executed, the defendant has still the eight days to put in bail, computed as in other cases.

the abode of such attorneys on the writ; and any attorney whose name is indorsed on the writ, must, after a demand in writing made to him for that purpose, declare whether the writ was sued out by his authority, and the name and place of abode of his client, if ordered; and if the writ be not issued by such attorneys' authority, the defendant may be discharged. The form of this indorsement may be as follows :—

"This writ was issued by E. F. of [*if sued out as agent for an attorney in the country, say,* "as agent for G. H. of], attorney for the plaintiff [*or plaintiffs*] within named."

Or, if sued out by the plaintiff in person :—

"This writ was issued in person by the plaintiff within named, who resides at, &c. [*mentioning the city,* &c. as before stated.]"

3. The writ and warrant must be *indorsed* with a statement of the *amount of the debt*, and with the amount of what the plaintiff or his attorney claims for the *costs* of the writ and arrest, and attendance to receive debt and costs, and with a statement that upon payment thereof within *four days*, to the plaintiff or his attorney, further proceedings will be stayed; which indorsement must be written or printed in the following form :—

"The plaintiff claims £ for debt, and £ for costs. And if the amount thereof be paid to the plaintiff, or his attorney, within *four days* from the arrest, or service hereof, further proceedings will be stayed."

If the sum so demanded be paid, the defendant is still at liberty to have the costs taxed, and if *one sixth* be disallowed, the plaintiff's attorney must pay the costs of taxation.

4. The sheriff, or officer, must indorse the exact day of the arrest upon the writ, and that within six days after the execution, or after being ruled to make the return, he would be subject to an attachment for the neglect, and be liable to make compensation in a summary way, for any damage that might result, as the Court or a judge

might direct. The form of indorsement, if the defendant be arrested, may be this:—

"C. D. was arrested by me, L. M. by virtue of this writ, on the day of 1833."

Or, if the defendant be only served with the writ, in this manner:—

"This writ was served by me, L. M. on C. D. on the day of 1833.
(Signed) "L. M."

After having attended to all these particulars in suing out this writ, take the affidavit, the writ, and the præcipe, to the signer of writs; or, if the capias be issued into Middlesex, then take them to the signer of the bills of Middlesex, who will sign the writ, and the affidavit (if not already sworn before a commissioner of the court) may be sworn before the signer of the writs at the same time; pay him 2*s.* 6*d.* for signing, and 1*s.* for the affidavit, if sworn before him. Leave the affidavit and præcipe with him. Take the writ to the seal office, and get it sealed; pay 7*d.* Take care that it is indorsed with the indorsements that are requisite; make *a copy* of it, including the *memoranda* and the indorsements, for the purpose of serving on the *defendant*. If more than one defendant, make a copy for *each* of them. Apply at the sheriff's office, and get a warrant thereon for the arrest, directed to the sheriff's officer you intend employing for that purpose, and pay 1*s.* for such warrant in Middlesex, Surrey, Sussex, and Kent, and 2*s.* 6*d.* in any other county. Give the copy, or copies, of the writ and the warrant to the officer, who will thereupon arrest the defendant.

If the defendant, or in the case of more than one, all are not arrested upon, or served with the copy of the capias within *four* calendar months from the date, you may sue out a second writ, called an *alias capias*, and four months after that, if necessary, a third writ, called a *pluries capias*, differing only as stated in the form given, at page 475: *and they are sued out and indorsed, &c. and a copy or copies of them are to be made*, in the same manner as in the common writ of capias:—take them to the office as before, and pay 2*s.* 6*d.* for sealing, and 7*d.* for signing.

The sheriff, it is understood, is not in law entitled to more than 20*d*. or his bailiff to more than 4*d*. for an arrest; and if either exact more, the party offending is liable to a penalty of £40. But the tax-master allows in costs 10*s*. 6*d*. if the arrest be in town, and one guinea if in the country, besides 1*s*. per mile for conveying the defendant to prison, if it be at any distance.

The warrant is an order from the sheriff to his officer to arrest the defendant, so that the sheriff may obey the order of the Court, as contained in the writ of *capias*. If directed to two or more, jointly and severally, any one of them may make the arrest; but if directed to them *jointly*, and not severally, all must be acting in the arrest, or it will be illegal. And if the direction, or any other part be left blank, and filled up *after* it is issued, the warrant will be void, and any arrest under it illegal.

The warrant must state the cause of action, the sum for which the defendant is held to bail, and at whose suit he is arrested. It must state the day and the year of the issuing the process, as set down in the process itself, and have indorsed upon it the name of the attorney who sued out the writ; but the omission of this latter indorsement only subjects the sheriff to a *penalty* of £5, but does not make the warrant void. The warrant must also have indorsed upon it the indorsement noticed before, stating the amount of debt and costs, and that if they are paid in four days after the arrest, further proceedings will be stayed. The sheriff must not make out the warrant until he has the writ actually in his possession, under a penalty of £10, nor must the bailiff arrest the defendant until he has received the warrant, or he will be liable for false imprisonment, and the Court or judge will discharge the defendant, and cancel the bail bond, if any.

The officer must take care that he arrests no other person but such as is described in the warrant; for, if he arrest C. D. upon a warrant against A. B., and C. D. was not commonly known by the name of A. B., then C. D. may maintain an action against the sheriff, although he were the person *intended* to be arrested, but *misdescribed* in the writ and warrant.

Care must also be taken not to arrest a *privileged* person on a bailable writ. If executed against a peer, peeress, or member of the House of Commons, the sheriff might be committed for a breach of privilege; and if executed against an ambassador, or his servant, the sheriff and his officer, and even the *plaintiff* in the suit, would be subject

to fine, imprisonment, and corporeal punishment. But in all other cases of *permanent* privilege, the sheriff may execute the writ, and no action for false imprisonment will lie. In cases of *temporary* privilege,* the sheriff may execute the writ; and the only remedy the person arrested has, is by application to the Court in term, or to a judge in vacation.

Clergymen are privileged from arrest while going to church to perform divine service, while so performing it, and returning therefrom.

A *bankrupt* is free from arrest and imprisonment "*in coming to surrender, and after such surrender during the forty-two days, and such further time as shall be allowed him for finishing his examination,*" if he was not in custody at the time of his surrender. But this does not prevent the arrest of a bankrupt by *his bail*, for the bail are *not* creditors; nor the retaking of a prisoner for escape, by the marshal of the Bench, even without an escape warrant.

The arrest may be made at any time within four calendar months from the date of the writ, including the date of the writ, and not afterwards. It may be made at any hour, even of the night, but not on a Sunday, or it will be illegal.† An arrest may be made at any place within the county, city, &c. to the sheriff of which the writ is directed; but it cannot be made in the king's presence, nor in the king's courts of justice while the king's justices are there sitting, nor within the verge of his royal palace (that is, as to the palace of *Westminster*, from Charing-cross to Westminster-hall,) unless under process out of the *Palace Court*, or by leave of the Board of Green Cloth; but the *Court*

* Parties enjoying temporary privilege are—every person connected with a cause, and attending in the course of it, whether compelled to attend by process, or not, such as witnesses, bail, attorneys, &c. while going to, attending, or returning from court;—*plaintiffs* attending from day to day at the sitting of the court, in expectation of their causes coming on;—persons attending to justify on bail; and *barristers* while on circuit, or attending court on business in which they are engaged; and this privilege extends from the superior courts to the court for insolvent debtors, the bankruptcy court, the inferior courts of sessions, writs of inquiry before the sheriff, witnesses attending before the judge advocate; and even parties and witnesses attending before an arbitrator are privileged, as if the case were still before the court; but the application for the discharge of a defendant arrested while attending a court of inquiry, must be made to the *court*, and not to the sheriff. A *convenient* time must be allowed to persons to return home, after the trial, &c is over.

† *Bail* may take their *principal* on a Sunday; and after a *negligent* escape, the defendant may be retaken even on a Sunday.

of Common Pleas have refused to discharge a defendant arrested upon a *capias* within such verge, without such leave, so that the limit of the verge is doubtful, but it is better to avoid the difficulty. It is agreed that no arrest can be made in *the Tower*.

Any *touching* of the defendant's person, however slight, is a good arrest; but *mere* words, such as telling a man you arrest him, are not sufficient; and if an officer send to inform a defendant he has a writ against him, and he must come and give bail, and the party call and execute a bail-bond, this is not an arrest.

An officer cannot break an *outer door* or *window*, to make an arrest; but if he obtain peaceable admission at the outer door, he may break an *inner door*, even if it be the door of a lodger; but this extends only to the dwelling-house of the defendant; for if he be in the house of a *stranger*, the sheriff (if refused admission) may break open an outer door to arrest him; and if a defendant escape *after* arrest, an outer door *may* be broken open to retake him.

A copy of the process, with the memorandum or notice subscribed thereto, and all indorsements thereon, must be delivered to the defendant *upon or forthwith after* the arrest, by the officer executing the writ, or the defendant might be discharged, and the bail-bond cancelled, on application *before* special bail was put in, but *after* special bail, the only remedy of the defendant for the neglect, would be an action against the sheriff for negligence, if he sustained any *real* damage by it.

If the writ be against *several* defendants, the plaintiff may *order* the sheriff to arrest *only one* or *more*, of them; and serve a *copy* of the writ on one or more of them, without arresting them; and the sheriff, &c. must *obey* such order accordingly, and the service will have the same effect as a *writ of summons* in *non-bailable cases*. The sheriff would be liable by action to the plaintiff, for any *real* damage resulting from negligence in this respect.

The sheriff, &c. must also indorse on the writ *the true day of the execution of it, whether by service or arrest*, within six days after the execution, on pain of summary judgment to make compensation; and the day of the execution must also appear in his *return* to the writ, or, after being ruled to return, he would be subject to an attachment.

If any other *bailable* writ be lodged with the same sheriff, (either by the same, or any other plaintiff,) while the

defendant is in custody, the officer is bound to detain him, until regularly discharged from the second writ; and for this purpose he must search the sheriff's office, to see if there be any detainers lodged against any person in his custody, before he discharges him.

The *process of detainer* of a defendant in custody, is the same as the process where he is at large, and the defendant must be served with a copy of the writ as before-mentioned; but if the first arrest were *irregular*, the defendant cannot be detained by any process, however regular, unless the *subsequent* process be at the suit of *another* plaintiff, and *without collusion* with the party first arresting.

After an arrest the party is generally taken to the house of the officer arresting, or of some other officer, where he may be confined until the *eight* days allowed for putting in *special* bail have expired; if not sooner legally discharged. He must *not* be taken to prison within *twenty-four hours* after the arrest, unless he *refuse* to go to a place of *safe custody*; and if *too ill* for *removal* from his own lodging, the sheriff, &c. may suffer him to remain there, and *should not remove him*, but must take care that he do not escape, or, at all events, have him in custody at the return of the writ, unless at that time also he continues too ill to be removed, which by some it is thought would be considered a sufficient return to the writ.

After the arrest, the defendant can only be discharged out of custody, upon giving a *bail-bond* to the sheriff; or security to the plaintiff for his appearance; or by depositing with the sheriff the sum sworn to, and *ten pounds* to answer costs, or without any bail or security: — or, failing these modes, he either escapes, or is lodged in the prison of the county.

The officer arresting, or the person in whose custody the defendant remains, must be furnished with the names of two sureties: and having satisfied himself of their sufficiency, he will prepare the *bail-bond;* and as soon as it is executed by the parties, the officer will discharge the defendant, upon being paid his fees, costs, &c.*

* The sheriff is *bound* to discharge a defendant upon *mesne* process in a personal action, upon *reasonable* sureties of sufficient persons, having sufficient property within the county, &c. and is liable to an action if he refuse; but the sureties must be respectively worth the penalty of the bond to maintain an action. The sheriff may take a bond with *one* surety only; but it is unusual, and sometimes not safe. He may also take a bond with three or more; and the sheriff is not

The bail-bond must be to the sheriff himself, by the name of his office, and upon condition written that the defendant shall appear at the day contained in the writ or warrant, and in such place as the writ, &c. may require. The bond requires no stamp.

Security to the plaintiff, in discharge of arrest, is given by contracts, or undertakings in writing for the defendant's appearance; they are valid in law; and such undertakings, if given by the attorney of the defendant, may be generally enforced by attachment; but the undertaking must be to the plaintiff by name, or to his attorney for him. And an undertaking by a third person to sign a bail-bond for the defendant, is not an undertaking within the statute of frauds, to answer for the debt, and therefore need *not* be in *writing*.

When a discharge is obtained by the deposit of the sum claimed, and the £10 to cover costs, the sheriff must pay the money into Court, within eight days inclusive after the arrest; and if the defendant afterwards duly perfect special bail, or render himself, he may obtain the money back again. For this purpose, "give a brief to counsel to move for a rule *nisi*, upon an affidavit stating the arrest, the deposit, payment of the money into Court, and that bail has been put in and perfected, as the case may be. Draw up the rule with the clerk of the rules, and serve a copy of it upon the plaintiff's attorney; afterwards, move in the same way, by counsel, to make the rule *absolute*, upon affidavit of service, and take the money out of court in the usual way."

And if a third person, and not the defendant, have deposited the money, the Court will order it to be paid back to such third person, on the surrender of the defendant, or the perfecting of bail; but if the bail be not put in and perfected, the Court upon motion, as above, will order the money to be paid over to the plaintiff. For this purpose, "make an affidavit, stating the arrest, the deposit, the payment of it into Court, and that bail has not been put in, or not perfected, as the case may be, and proceed in the manner above directed." The application

answerable to the plaintiff if the sureties be insufficient, for it is at the choice of the plaintiff whether he will take an assignment of the bail-bond or not. The sheriff may take a bail-bond from a defendant *without* arresting him; but it must be executed and taken on or before the eighth day limited to putting in bail. In practice, the bond is taken for *double* the sum sworn to, and the bail are liable to the whole debt proved, to the full extent of the penalty, although it exceed the sum sworn to, besides the costs.

must not be made until the *expiration* of the day for *perfecting* the *special bail;* and the Court, under circumstances, may grant the defendant further time to perfect bail, or render. Where a defendant cannot be found, to serve personally with the rule for the plaintiff's taking out the money, the Court will allow the service to be good, by leaving a copy of the rule at the defendant's last place of abode, and sticking another up in the office. The deposit of £10 is subject to such deductions as may be reasonable, on taxing the plaintiff's costs; but no sheriff's nor officer's poundage or fees can be deducted on an order for payment of this money out of Court.

When the money has been thus received by the plaintiff out of Court, he may still enter a common appearance for the defendant, and proceed with his action; but he does this at the risk of losing his costs, if he do not establish a claim to more.

The sheriff, &c. if he will, may discharge the defendant without bail-bond, or any security for his appearance; and if he retake him before the time limited for his appearance, or if after returning *cepi corpus*, and before the expiration of the rule to bring in the body, the defendant put in and perfect bail, or render, the sheriff, &c. is *not* liable to any action for an escape, or for a false return.

The sheriff is *bound* to discharge a defendant without bail-bond, &c. upon receiving a written discharge from the plaintiff or his attorney; but he may detain him to make proper searches, and for his fees, although an attorney cannot. And if the sheriff, &c. improperly discharge a defendant, and is obliged to pay the plaintiff his debt, he cannot bring an action against the defendant for the money so paid. And if the sheriff, &c. permit a voluntary escape, that is, permit a defendant to go at large, if the party were in custody under a writ of execution, the sheriff *cannot retake him*, and would be subject to an action for false imprisonment if he did; but if the defendant were in custody on mesne process, the sheriff might retake him at any time before the time limited for his appearance has expired, but *not after then;* and after such voluntary escape, and the sheriff pay the debt, he cannot maintain an action against the defendant for the money so paid. But persons preventing the sheriff, &c. from retaking a defendant after an escape, may be proceeded against by attachment, as in other cases of obstructing the execution of the process of the Court. If the defendant, after arrest, and *before* taking to prison, be *rescued*, the sheriff will be excused

from having his body in Court at the return of the writ; but if rescued *after* being carried to prison, even if while the sheriff is bringing him to Court by *habeas*, the sheriff is answerable for it as an escape.

Rule or Order to return the Writ.

If the defendant does not appear to the writ, according to the condition of the bond, the bond is forfeited, and the plaintiff may either take an assignment of the bond, and proceedings against *the bail*, or he may compel the sheriff to return the writ, and bring in the body of the defendant, or, in other words, to put in perfect and special bail. If the bail to the sheriff be good, it is usual and generally advisable to take an assignment of the bail-bond, and proceed on that, in preference to proceeding against the sheriff. But if it is determined to proceed against the sheriff, he must in term time be served with a rule, and in vacation with a judge's order, to return the writ; or, if bail has been already put in, but *not justified*, to *except* to the bail, and serve a *notice* of exception; and then a rule, or in vacation obtain a judge's order for the sheriff to return the writ, in order to compel a *justification*. This mode of proceeding, however, must be adopted without unnecessary delay; for if the plaintiff do not proceed as early as possible, the Court will not interfere to compel the sheriff to put in and justify bail, particularly if he would be placed in a worse situation than he would have been if proceeded against in the first instance; as the rule or order to return the writ is the first intimation the sheriff has that the sheriff has made default.*

To obtain the rule in *term*, "make out a præcipe for the rule, and apply to the clerk of the rules for such rule, and he will draw it up. Mention to him the name of the officer who made the arrest, &c. Pay 6*s*. 6*d*., or, if to a county palatine or the cinque ports, 7*s*. If in *vacation*, take out a judge's summons, and attend him thereon, as in other cases, and obtain his order for the return of the writ. It is also usual in these cases to lay before the judge an affidavit of the facts."

* The plaintiff cannot proceed against the sheriff where the defendant surrenders before the expiration of eight days inclusive after the execution of the writ, or where the plaintiff has taken an assignment of the bond, or where he accepts a *cognovit*, or other security, without the privity of the sheriff, or where the arrest has been made by a special bailiff, nominated by the sheriff or his agent. And the sheriff must be proceeded against thin *six lunar months* after the expiration of his office.

This rule calls on the sheriff to return the writ within four days in London and Middlesex, and six days in other counties. If the rule be on the *late* sheriff, he must be so designated. A copy of the *rule*, or *order*, with the arresting officer's name indorsed on it, must be *personally* served on the sheriff, or his under-sheriff, and the original shewn to him, at the same time. In London it is served on the deputy-secondary at his office, 28, Coleman Street; in Middlesex, on Mr. Burchell, at the sheriff's office, Bedford Street, Bedford Row; in Surrey, either on the sheriff or under-sheriff, or his agent in London; and in all other counties, on the sheriff or his agent. "When you serve the copy of the rule or order, take a memorandum of the name of the person on whom you have served it, that you may insert it afterwards in your affidavit of service."

When the time limited by the rule, &c. has expired, search the office of *custos brevium*, at the Treasury-chamber, Westminster Hall, where every writ must be indorsed with the *day* and *hour* at which it is filed. If the sheriff make no return of the writ, he will be in contempt; and, "in *term* time an attachment may be moved for against him upon an affidavit, stating the personal service of a copy of the rule or judge's order to return the writ, that such rule or order was at the same time shewn to the person served, and that the writ is *not* filed; and in case of a judge's order for the return, such affidavit should also state that the order has been made a rule of Court, in the term next following such order."

The attachment is sued out and proceeded on thus:—"Go to the rule office, and get the rule for the attachment; take it to the crown office, and one of the clerks will make out the attachment; pay 13*s*. 6*d*. Then make out your bill of costs, (including the coroner's fee, and 2*s*. 6*d*. for the warrant), and take it and the attachment to the coroner, to whom it is directed, and he will grant a warrant thereon. Upon the return of the attachment, call on the coroner, and he will pay you."*

* If the coroner does not pay, get a side rule at the crown office for him to return the writ of attachment; and if he does not pay on the expiration of the rule, move the Court for an attachment against him, on affidavit of the rule to return the attachment, and that it was not returned. An attachment will issue absolutely against the coroner in the first instance, directed to *Elisors*, and upon being taken on this attachment, the coroner must pay debt and costs. If the coroner return that he has *taken the sheriff*, set the clerk in Court to obtain a rule for a *habeas corpora* to bring in the body of the sheriff; this rule is obtained on counsel's signature. If the

If the sheriff has returned *cepi corpus*, a side-bar rule for him to bring in the body may be obtained in the way directed in page 487, for the return of the writ, "except that you pay the clerk of the rules only 4*s*. or if to a county palatine, or the cinque ports, 4*s*. 6*d*.," but *no delay* must take place in the application. This rule, &c. must be served in the same *way* and *time* as the rule, &c. to return the writ; and the sheriff must either bring the defendant into Court, or he will be liable to an attachment, to be sued out as before stated. Formerly, if the rule expired on the *last* day of term, the sheriff had to the *first* day of the *next* term to justify the bail, or comply with the rule to bring in the body; but now, if the notice of exception require them to do so, he must justify before a judge in vacation; and if the limited time have expired, the contempt is not purged by rendering the defendant, or putting in or perfecting bail, on a subsequent day, even although *before* the attachment is moved for; and if *two days'* time to justify be given, and bail is not justified within the *last* of the two days, an attachment may issue on *that day;* and if the defendant die after the sheriff is in contempt for not bringing in the body, an attachment might issue for the previous contempt, though the original cause is abated by the defendant's death. But the sheriff is not obliged to bring the defendant actually into Court; it is enough to shew that he is in custody, or have rendered in discharge of his bail; and if he be not in custody, the sheriff or his officer may put in bail for him, and then *render* him in their discharge without justifying.

Proceedings on the Bail Bond.

When the defendant is arrested, and the plaintiff chooses to proceed upon the bail-bond, the sheriff, at the request or cost of the plaintiff or his attorney, must assign such bond, by indorsing the same, and attesting it under his hand and seal, in the presence of two or more credible witnesses. The assignment requires no stamp.* The action

habeas corpora be not obeyed, move for a rule for an attachment against the coroner, and being taken under it, you will get from him the debt, &c.

* If the sheriff refuse to assign the bond, the only remedy against him is by action. The plaintiff may take an assignment at any time *after* the forfeiture; and it may be made by the sheriff or the under-sheriff, in the sheriff's name, but not by the under-sheriff's clerk. By taking this assignment, the plaintiff discharges the sheriff, and cannot even call upon him to return the writ, if the bond be valid; nor can he demand a plea from the defendant, or proceed with the original action, without waving his right of

on the bail bond may be brought by the plaintiff in his own name, even though he become bankrupt; but it cannot be commenced until the expiration of *four days* exclusive from the appearance day of the *capias*, if the arrest were in London or Middlesex, or until the expiration of *eight days* in any other county.

To obtain the assignment of the bond, "if in Middlesex, apply at the sheriff's office in Red Lion Square; if in London, at the secondary's office, 28, Coleman Street; or in any other county at the office of the sub-sheriff or his agent in town, and the bond, with the assignment to the plaintiff indorsed upon it, will be given you: in London and Middlesex, for 5*s.*; in any other county, for 6*s.* 8*d.*

"In order to commence an action on the bail-bond, after having obtained an assignment of it, sue out a writ of summons against the bail and principal, and serve them with copies thereof. Afterwards deliver your declaration, and proceed as in ordinary cases in non-bailable actions."

You must take care to bring the action against *all the parties* to the bond jointly, if they can be served with process, or if there be not some other good reason for suing them separately; for if separate actions were brought without sufficient reason, the Court might stay proceedings on payment of the debt and costs in *one action only*.

Setting aside or staying Proceedings upon the Bail Bond, or against the Sheriff

The Court will set aside any proceedings against the sheriff which are *irregular*, with costs; and if any *previous* proceedings of the plaintiff with regard to the bail be irregular, the sheriff is not liable to an attachment, upon such bail not afterwards being perfected; as, for instance, if bail be put in in time, and no exception be entered, or merely a verbal and not a written notice of exception be given, or the notice of the exception be entitled "In the Common Pleas," instead of "In the King's Bench," the Court will set aside

action on the bail-bond Formerly, after an assignment of the bond, if the *same* bail were put in as bail above, plaintiff could *not* except to them, but he *may* do so now If the action is brought by the assignee of the bond, it must be brought in the King's Bench, if the original action were commenced there, but if brought by the sheriff, it may be brought in any Court.—Neither the principal nor bail can be holden to bail in an action upon the bail bond, but when the *judgment* has been obtained in an action on the bail-bond, the bail may be held to bail in an action on the judgment

the attachment as against the sheriff, although it has been waived as respects the defendant.

If the bail bond has been assigned and proceeded upon, owing to some *mistake* of the defendant or his attorney, the Court will stay proceedings upon payment of the costs, and order the mistake to be rectified; but would probably require an affidavit of the particular circumstances of the application.

If the plaintiff takes a *cognovit* from the defendant for payment by instalments, without the knowledge of the sheriff, he cannot proceed against him, nor on the bail-bond, if he take such *cognovit* without the knowledge of the bail.

It is not necessary to put in bail to the original action *before* making an application to set aside proceedings for irregularity; but it *is* necessary, where the application is to set aside proceedings which are *regular*; for even in cases where proceedings are perfectly correct, the Courts exercise a *discretionary* power to stay them on certain terms, to try *the merits* of the case.*

No rule can be obtained for setting aside an attachment against the sheriff, or staying proceedings upon the bail-bond, unless the affidavit, if by the defendant, is grounded on an affidavit of merits; or if by the sheriff, his officer, or the bail, upon an affidavit that the application is made on behalf of the several parties, at their own expense, and for their own indemnity, without any collision with the original defendant. And in this application, to set aside an *attachment*, the affidavit must be entitled, "The king against the sheriff of , in a cause of against ."

* The usual terms of staying proceedings are these:—if the plaintiff have not lost a trial, the proceedings are stayed on payment of the costs incurred; and where necessary, that the defendant shall receive a declaration, plead issuably, and take short notice of trial. But if the plaintiff has *lost a trial*, that is, where he has pleaded *de bene esse*, and has been prevented, from want of special bail being perfected in time, from entering his cause (if a town one) in the term next after the term, or vacation of term in which the writ is executed, and in a country cause, at the ensuing assizes, the attachment must remain in the office, or the bail-bond stand as security in the original action for debt and costs, if the plaintiff should have a verdict, although the bail should have surrendered their principal, unless the delay has arisen from the plaintiff's own neglect. But to entitle the plaintiff to this security, he must have pleaded *de bene esse*; and he may then sign judgment, (after entering an appearance for the defendant, if he has not already appeared) without as formerly proceeding to trial on the bond; so *the bail* should take care that they have no defence to an action on the bond, before they agree to its being security.

To set aside proceedings on the bail bond, it is entitled in the original action, or in the action on the bail-bond; but the affidavit *must state positively* that the defendant has a good defence to the action "*upon the merits.*"

"Previously to making this application, you must either put in or perfect bail in the original action, and the notice of bail in that case must be, that the defendant will put in and perfect bail on such a day, (unless bail have been put in already, when the notice will be of justification only,) or render the defendant. The plaintiff may then oppose the justification of the bail, without its being a waiver of the bail-bond. When the rule is made absolute, get an appointment on it from the master, serve a copy of it on the plaintiff's attorney, tax your costs, and pay them without delay, or the rule and order will not operate to stay proceedings; after which, plead to the action."

This application may be made at any time, and has been granted even after execution sued out and executed against the bail; and it may be made on the same day the bail justify.

Special Bail.

Special bail (or, bail above, as sometimes called) are persons who undertake that if the defendant be condemned in the action, he shall satisfy the costs, &c. or give himself up to the marshal, or they will do it for him. The bail must consist of two persons, and where the debt is large, the Court will allow *three* or *more*. If special bail be not put in after common bail, the defendant must pay into Court the amount of the sum indorsed on the writ, and £20 besides as security for costs, and he may then enter a common appearance.*

But if a plaintiff deliver a declaration absolutely, or demand or accept a plea after a declaration *de bene esse*, and before bail is put in, this amounts to a *waiver* of special bail.

It is said, bail may be put in by defendant after the writ is issued, though no arrest has taken place, and no bail

* The following is the form of the appearance.

In the Court of
county of
Plaintiff,
against
Defendant.

{ *Attorney for*
or,
Defendant in person. }

Entered the *day of* 1833.

bond given, and by such means hold the sheriff harmless; and bail may be put in at any time pending a suit, to obtain the release of the prisoner.

When notice of bail is given by the defendant, the plaintiff may give notice of application for time to inquire after the bail; but he must not require more than three days in term, and six days in country bail; and the notice for time must be served *one day* before the time for putting in and justifying the bail.

The bail may be put in before a judge in town, a commissioner in the country, or a judge of assize in the circuit. It is usually put in at chambers, but sometimes at a judge's house, and is put in either *absolutely* (which must be with the consent of the plaintiff, and is not common in practice,) or *de bene esse*, (that is, conditionally,) subject to the plaintiff's approval or exception afterwards. Bail in the King's Bench is thus put in:—

"First obtain, if requisite, a copy of the writ with the sum sworn to, either from the bill of Middlesex office, if the writ were issued into that county, or from the signer of the writs, if issued into any other county, or at the sheriff's office. Engross your bail-piece on a plain piece of parchment, a printed form of which you may procure at the stationer's;—take it to the judge's chambers, and having the bail with you, apply to the judge's clerk, who will take the bail; pay him 4*s.* in term, and 5*s.* in vacation. In the King's Bench and Common Pleas, the bail do not sign the bail-piece, but they do in Exchequer writs. Leave the bail-piece at the judge's chambers, where it remains until the bail is perfected."*

When the bail are thus taken *de bene esse*, the defendant

* The bail-piece must state the *day of the month*, and the *year* in which the bail is put in, and it must state the *county*, in accordance with the writ, or the bail will be irregularly put in. The names of the bail must also be stated correctly, or the Court will not amend the error without the consent of the bail, and their re-acknowledging the obligation. The following is the form of the bail-piece.

In the King's Bench.

Term, in the year of the reign of King William the Fourth.

Ellenborough.

to wit.

having been arrested delivered on bail to
at the suit of

Oath, £

Taken and acknowledged conditionally
at my chambers in Serjeant's Inn,
this day of before me

or his attorney must give a written notice to the plaintiff, or his attorney, without delay,* as the bail is not valid without the notice. It may be given *before* the bail are put in; and where you intend to justify the bail at the time of putting them in, you must give *four days'* notice of so putting in the bail previously, before *eleven o'clock* in the morning, and exclusive of Sunday; but where you do not intend justifying at the time of putting in, it is not usual to give the notice until after they are put in; and in all cases a *two days'* notice of justification will suffice. The notice must be entitled, "In the King's Bench," and also correctly entitled in the case. It must *not* contain more than *two* bail, except by an order of the Court, or it will be irregular; it must set forth with truth and certainty the names of the bail, and their addition of degree or mystery. A schoolmaster, or a clerk in the custom-house, may be described as a *gentleman*;—a "shopkeeper," is generally a sufficient description, but a "manufacturer" is not;—and if a *false* addition be given to the bail, as calling a person who was a baker, or a Scotch ale agent, a gentleman; or, if the bail be not designated as the younger, where he and his father are of the same name, the notice will be defective.

In addition to these descriptions of bail, the notice must also mention the *street* or *place*, and number (if any) where each of the bail reside; and *all* the streets or places, and numbers, (if any), in which each of them has been resident at *any time* within the last *six months*, and whether he is a householder or a freeholder; and this rule must be *strictly* observed: and a notice that the bail

* The following is the form of notice in ordinary cases.

In the

Between *plaintiff, and* *defendant.*

Take notice that special bail was this day put in for the defendant in this cause, before *, and the names and additions of such bail are that the said* *is a* *and hath during the last six months resided at* *aforesaid, and that the said* *is a* *and hath during the last six months resided at* *aforesaid. And also take notice that each of the said bail have made an affidavit, a copy of which is hereunto annexed.*

Dated this *day of* 1833.

Yours, &c.
Defendant's Attorney.
or,
Defendant in person.

To M *Plaintiff, or*
Plaintiff's Attorney or Agent.

had "*within* the last six months, (instead of FOR the last six months) resided," &c. is not a sufficient observance of the order. The *actual* residence of the bail must also be stated; but if the bail has had *two* places of residence during the *whole* of the preceding six months, *only one* need be given in the notice;—and notice of bail, as put in before one judge, if put in before another is irregular. The notice should be served, either upon the plaintiff's attorney personally, or upon some clerk or servant in his office; but if he cannot be met with, and his office be closed, it will be sufficient to put up a copy of the notice in the King's Bench office, and put another under the attorney's door; and leaving a notice at any place where the plaintiff's attorney's papers are usually left him, has been deemed sufficient; but service on the master of a house where an attorney had an office is not sufficient, without other privity is shown to exist between them. The service must be made *before nine o'clock at night*; and though received and read *after* that hour, it is *not good*, even as a notice for the *next* day, but a new notice must be served. The following is a form of notice in which the particulars are varied:

In the King's Bench [*or* Common Pleas].

Between A. B. plaintiff, and C. D. defendant.

Take notice that special bail was this day put in [*if in Common Pleas, say*, "put in with the filacer,"] in this cause, for the defendant, before the honourable Mr. Justice , at his chambers in Serjeant's Inn, Chancery Lane, London, and the names, additions, and particulars of and relating to such bail are as follows. The said bail are John Styles, of No. , Street in the county of , , and who is a housekeeper there, and John Nokes, of No. , Place, in the said county, and who is a housekeeper there, and who is also a freeholder of a messuage and land in the parish of , in the county of , and which is now in the possession of T. T. as his tenant; [*let these statements agree precisely with the facts,*] and the said John Styles hath resided continually for upwards of the last six months at No. , Street, aforesaid; and the said John Nokes, in the month of last, did reside at No. , Street, , in the county of , and in that month he removed from thence to No. , in the county of , where he resided continually, from on or about the day of the said month of

, until on or about the day of last, and on or about that day he removed from thence to No. , Street, aforesaid, and from that time the said John Nokes hath there resided continually till this day. [*If you accompany the notice of bail with an affidavit of their sufficiency, add the following:* "And further take notice, that the said, &c. (*names of the bail,*) have duly made and sworn to the affidavits which accompany this notice for your perusal, and copies of which affidavits are herewith left."] Dated this day of , A. D. 1833.

Yours, &c.
D. A. of
Defendant's attorney [*or* agent.]

To Mr. P. A.
Plaintiff's attorney [*or* agent.]

The form in the *Exchequer* is varied in some particulars, and runs as follows:—

In the Exchequer of Pleas.
Between A. B. plaintiff, and C. D. defendant.

Take notice, that special bail was this day put in in this cause, for the defendant, before the honourable Mr. Baron , at his chambers in Serjeant's Inn, Chancery Lane, and that the bail-piece has been filed in the office of pleas with the sworn clerks, and the names and additions and particulars of and relating to such bail are as follows; namely, John Stokes, of, [&c. *proceed as in the preceding form to the end.*] [*If the fact be so, state,* "and they are the same as are bail to the sheriff."]

Where bail is proposed to be *put in* and *justified* at the *same time*, the following is the form of notice:—

In the King's Bench [*or* Common Pleas, *or* Exch. of Pleas.]
Between A. B. plaintiff, and C. D. defendant.

Take notice, that special bail will be put in in this cause, for the defendant, on the day of instant, [*or* "next,"] in open court at Westminster Hall, [*or if at chambers in vacation, state it accordingly,*] and the names and additions of the persons to become such bail are, &c. [*here state the full names and additions of the bail, and whether they are housekeepers or freeholders, and their residences for the last six months, &c. as in the notice of bail, page 495, to the end, then say,*] and further take notice, that the

said John Styles and John Nokes will at the same time justify themselves as good and sufficient bail for the said defendant.

Dated this day of , A.D. 1833.

Yours, &c.
D. A. of
Attorney for the defendant.

To Mr. P. A.
Plaintiff's attorney [*or* agent.]

If the defendant be provided with good bail, he may, by the new rules, accompany the notice of bail with an affidavit of each of the bail, which must correspond with the following form.

In the King's Bench [*or* Common Pleas, *or* Exch. of Pleas.]
Between A. B. plaintiff, and C. D. defendant.

B. B. one of the bail for the abovenamed defendant, maketh oath and saith, that he is a housekeeper [*or* "freeholder," *as the case may be,*] residing at , [*describing particularly the street or place, and number, if any*] that he is worth property to the amount of £ , [*the amount required by the practice of the Court,*] over and above what will pay his just debts; [*if bail in any other action, add,* "and every other sum for which he is now bail"]; that he is not bail for any defendant except in this action, [*or if bail in any other action or actions, add,* "except for C. D., at the suit of E. F., in the Court of , in the sum of £ ; for C. H., at the suit of I. K., in the Court of , in the sum of £ ; *specifying the several actions, with the courts in which they are brought, and the sums in which the deponent is bail*]; that this deponent's property, to the amount of the said sum of £ , [*and if bail in any other action or actions,* "of all other sums for which he is now bail as aforesaid,"] consists of , [*here specify the nature and value of the property in respect of which the bail proposes to justify, as follows.*]—"stock in trade, in his business of , carried on by him at of the value of £ ;" "of good book debts owing to him to the amount of £ ;" "of furniture in his house at , of the value of £ ;" "of a freehold [*or* "leasehold"] farm of the value of £ , situate at , occupied by ;" [*or* "of a dwelling house of the value of £ , situate at , occupied by ;" *or of other property, particularising each description of property, with the value thereof*]; and that this deponent hath for the last

six months resided at , [*describing the place of such residence, or if he has had more than one residence during that period, state it.*] B. B.

Sworn, &c.

Either the *original* or a *copy* of this affidavit must accompany the notice of bail; and if it be a *copy*, as it usually is, head it with the word "copy." The bail are required to swear, by a recent rule, not merely that they are *possessed* of the property requisite, but that they are *worth it*; and a qualification by money in the funds, must be attended with a statement of the particular fund, or further time might be given for the plaintiff to inquire as to the sufficiency. But an affidavit of sufficiency by *country bail*, purporting to be of the above form, though *not* containing all its requisites, is *good*, if it be sufficient according to the old form, but it is much better, and quite as easy to have it accurate.

If the plaintiff *except* to the bail making the aforesaid affidavit, and the bail be *allowed*, he will have to *pay* the *costs* of the justification, unless the Court order otherwise, in consequence of some irregularity on the part of the defendant; but if the bail be *rejected* the *defendant* must pay the costs, and the plaintiff must give *one day's* notice of an exception to the bail making the affidavit of sufficiency, or they will be considered as justified.

If the plaintiff is satisfied with the bail, he will proceed with the action; but if he considers both, or either not to be sufficient, he must enter an *exception*. If the defendant has given the *four days'* notice that he will put in and justify the bail at the *same time*, and has *accompanied* the notice with the affidavits of sufficiency, the plaintiff must give the defendant, or his attorney, notice of exception in the following terms:—

In the King's Bench [*or* Common Pleas, *or* Exch. of Pleas.]
A. B. plaintiff, *v.* C. D. defendant.

Take notice, that I have excepted against the bail put in in this cause for the defendant [*if you require the bail to justify before a judge at chambers in vacation, then here add,* "and I hereby give you notice that I require such bail to justify before a judge at chambers."]

Dated this day of , A. D. 1833.

Yours, &c.
P. A. plaintiff's attorney [*or* "agent."]

To Mr. D. A.
Defendant's attorney [*or* "agent."]

If, however, the defendant has given notice of justifying bail at the time of putting them in, but has *not* accompanied the notice with the affidavits of sufficiency, the plaintiff need *not* give any *notice* of his excepting to them, but may oppose them at the time appointed for justification.

If the defendant have *not* given notice of justification at the *same time* as of *putting in bail*, the plaintiff is at liberty to except to the bail at any time within *twenty days* after the service of notice of bail; but if he do not except to them *within* that time, they will be deemed accepted and justified; but if the *twentieth* day happen to fall on a *Sunday*, the exception may be made on the *Monday*. The notice of exception to bail in ordinary cases is as follows:—

In the King's Bench [*or* Common Pleas, *or* Exch. of Pleas.]
A. B. plaintiff, *v.* C. D. defendant.

Take notice, that I have excepted and do except and object to the bail or intended bail whereof notice has been given in this cause, and do hereby require them to justify in person in open Court at Westminster Hall, notwithstanding the affidavits made by them, and which accompanied the notice of bail served in this cause.

Dated this day of , A. D. 1833.

Yours, &c.
P. A. plaintiff's attorney,
[*or* "agent."]

To Mr. D. A.
Defendant's attorney, [*or* "agent."]

If the plaintiff or his attorney do *not* except to the bail within the limited time after the notice of bail, or is precluded from excepting to them, the defendant, or his attorney, may obtain the bail-piece from the judge's clerk, and file it with the signer of writs, which will of course perfect the bail; and if the plaintiff *do* except to the bail, the *notice* of exception will be a *mere* nullity, "*unless the exception is entered in the bail-book at the judge's chambers within* the *twenty* days after service of the notice of bail, in *ordinary* cases, or within *one* day after notice *with* the affidavits of sufficiency for justifying at the time of putting in the bail."

Form of adding Bail.

The bail of whom notice has been given cannot now be changed, without the leave of the Court, or a judge; but, with sufficient reason, leave will always be given, and if after notice of bail, or of putting in, or justifying bail, the defendant discover that one or both of them will not be able to justify for want of sufficient property, or illness, &c. "the defendant should immediately procure other bail, make an affidavit of the facts, and apply to the Court for a rule, or to a judge for a summons for leave to add another, or two other bail, and, if necessary, also for time to justify the other bail, and for staying the proceedings till the time granted has expired. A copy of the affidavit and of the summons must be immediately delivered to the attorney of the plaintiff, and the judge, at the time of attending upon the summons, will make an order. You may make the application at the time appointed for justifying the original bail, but it ought to be made sooner, if possible; and in all cases you must take care that the summons is returnable before the time for justifying bail has expired."

The following is a form of the affidavit required to add bail:—

In the King's Bench, [*or* Common Pleas, *or* Exch. of Pleas.]
Between A. B. plaintiff, and C. D. defendant.

B. B. of , , and C. D. of , , the abovenamed defendant, and D. A. of , attorney for the said defendant, severally make oath and say, and first the said B. B. for himself saith, that at the instance and request of the abovenamed defendant, the said C. D., this deponent consented and agreed to become one of the bail for him in this action, and became such bail accordingly, and that he this deponent then and until late on yesterday evening fully expected and believed that at the time he so consented and became bail as aforesaid, he was and continued to be worth and entitled to sufficient property of his own, and was and continued to be in all respects fully competent and able to justify as good and sufficient bail in this action for the said defendant, and he so informed the said defendant, and the said D. A. the said other deponent, before he became such bail. But this deponent having since particularly and carefully examined and considered the extent of his property and his debts and liabilities, he this deponent last

night, and not before, ascertained, that although he is justly entitled to more property than sufficient to pay and satisfy all his just debts and present liabilities, yet that he cannot now with propriety justify as bail for the said defendant in this cause, inasmuch as this deponent is now doubtful whether some of the debts due to him will be paid; and he thereupon last night, and not before, informed the said defendant thereof. And these deponents, the said defendant and the said D. A., for themselves respectively say, that until last night (when the said B. B. informed the said defendant as stated in his affidavit,) they fully expected and believed that the said B. B. was possessed of sufficient property, and was in all other respects competent and able to justify as good and sufficient bail for the said defendant in this action. And they further say, that J. J., of , , [*naming another person, with his addition and description, and whether a housekeeper or freeholder, and his residences for the last six months,*] hath consented and agreed to become an added bail for the said defendant in this action, in lieu of the said B. B., in case the Court, or one of the learned judges thereof, will give leave for that purpose. And these deponents have diligently inquired into the circumstances of the said J. J., and verily believe that he is fully able and competent to justify as an added bail for the said defendant in this cause.

B. B.
C. D.
D. A.

The abovenamed deponents B. B., C. D., and D. A. were severally sworn in the Court of , at Westminster Hall, [*or* "at my chambers in Serjeant's Inn, Chancery Lane," *or* "at my house in Bedford Square,"] the day of , A. D. 1833. By the Court [*or* "before me." *Judge's or Baron's signature.*]

When you have obtained leave, add the names and the additions of the new bail on the back of the bail-piece at the judge's chambers, or you may do it at Westminster, the morning you justify, if you intend then to obtain leave to add bail, but you must then get the bail-piece from the judge's clerk the evening before. Pay 2*s.* each for the added bail, and the judge's clerk 2*s.* 6*d.* for the bail-piece. If one or both of the bail who offer to justify are *rejected* for *insufficiency*, the bail-piece becomes a nullity, and you

cannot add new bail upon it; but to proceed with justification, you must give new notices of putting in and justifying.

When the bail are added, the Court will exonerate the previous bail, by entering an *exoneretur* on the bail-piece, at any time before proceedings by *scire facias* are taken against them, and sometimes after such proceedings, on payment of costs.

Notice of Justification of Bail.

The defendant *may* justify bail at the same time at which they are put in, provided he give a four days' previous notice of such putting in, and at all events a *two* days' notice of justification before eleven o'clock in the morning, and exclusive of Sunday. This notice must be framed and served in the same manner as a notice of justification in other cases presently noticed, or the bail may be successfully opposed for a material defect in it. If in such notice of bail their residences for the last six months be stated, it is not necessary to repeat it in the notice of justification. If the plaintiff in such cases be desirous of time to inquire after the bail, and shall give one day's notice thereof to the defendant, his attorney, or agent, before the time appointed for justification, stating therein what further time is required, such time not to exceed three days in the case of town bail, and six days in the case of country bail, then (unless the Court or a judge shall otherwise order) the time for putting in and justifying bail will be postponed accordingly, and all proceedings be stayed in the mean time.

In *other cases* the bail must justify within four days after notice of exception, if the notice be given in term time; or if the notice of exception be given in vacation, and the notice require the bail to justify before a judge, they must justify within four days from the time of such notice, otherwise on the first day of the ensuing term; and these rules apply, even although the defendant may have put in bail before the time allowed him for that purpose had expired. But after a rule to bring in the body, the defendant has the same time to justify as the sheriff to bring in the body, namely, four days in town, and six in country cases. Notice of justification must be given accordingly. In all cases a two days' notice of justification will suffice. If the four days expire on the last day of the term, and the bail do not justify before the rising of the Court on that day, the plaintiff may take an assignment of the bail

bond the same evening and proceed upon it, or move for an attachment against the sheriff, at the rising of the Court, if the rule to bring in the body have expired. It should also be observed, that if you are to give notice to justify on the last day of the time limited for justification, and that day happen to be a holiday on which the Court does not sit, you must, notwithstanding, give notice for the holiday, in order to prevent an assignment of the bail bond, and the bail may justify on the day after as a matter of course. If the bail originally put in and excepted to intend to justify, one day's notice of justification must be given to the plaintiff's attorney; as, on Saturday for Monday, Tuesday for Wednesday, &c.

If bail are *added*, unless otherwise ordered, there must be two days' notice of justification; as Thursday for Saturday, Saturday for Tuesday, (Sunday not being reckoned), &c. This notice must specify the addition and place of abode, &c. of the added bail, in the following form:—

In the King's Bench, [*or* Common Pleas, *or* Exch. of Pleas.]
Between A. B. plaintiff, and C. D. defendant.

Take notice, that J. J. of , , and who is a [housekeeper] there, and J. B. of , , and who is a [freeholder of a messuage and land in the parish of , in the county of , in the possession of , his tenant,] will by the leave and order of the honourable Mr. Justice [*or* Baron] , on next, add themselves to the bail already put in in this cause for the said defendant; and will at the same time justify themselves in open court at Westminster Hall, in the county of Middlesex, as good and sufficient bail in this cause for the said defendant, and the said J. J. hath resided continually, &c. [*here state the different residences of both the bail for the last six months, as in the form, page* 495.] Dated this day of , A.D. 1833.

D. A., of ,
Defendant's attorney [*or* "agent."]

To Mr. P. A.
Plaintiff's attorney [*or* "agent."]

The notice of justification must be properly entitled in the cause; therefore, where it was in the name of one only of two plaintiffs, it was holden bad. It must not be of more than two bail, unless by leave of the Court or a

judge; and if the Court or a judge so order it, you should serve the rule or order on the plaintiff's attorney or agent, before or at the time of the service of the notice of justification. The notice should contain the christian and surnames of the bail; but it need not state their addition or places of abode, unless it be a notice of justification of *added bail*. In an action against several, it is no objection to the notice of justification, that it states the bail will justify for three, bail for two only having been put in. Before this rule, a notice that *three* would justify was good; but not so a notice that A., B., and C., *or two of them*, would justify.

This notice, whether of the bail originally put in, or of added bail, must be served *before* eleven o'clock in the forenoon of the day on which it is required to be given according to the practice of the Court. But bail, justifying under a rule or order for time, do not, it seems, come within this rule. The service should be made in the same manner as the service of a notice of bail already pointed out.

Care must be taken that the notice of justification be given by the same attorney that gave the notice of bail, (unless, in the mean time, the defendant have obtained an order to change his attorney); otherwise the bail will not be allowed to justify. But where the defendant's attorney refused to proceed to the justification, the Court allowed the bail to appear and justify by their own attorney; and where the defendant's attorney gave notice of bail, and the bail to the sheriff by their attorney gave notice of adding and justifying other bail, the Court held it to be sufficient.

Justification, when, how, &c.

If the defendant, or his attorney, has given notice of justifying the bail at the time of putting them in, and has accompanied the notice with affidavits by them of their sufficiency, then, unless the plaintiff has given notice of, and entered, his exception to them, at all events, one day before the time for so putting in and justifying the bail has expired, they will be considered as justified. If the defendant has given such notice of justifying bail at the time of their being put in, but has *not* accompanied the notice with such affidavit by them of their sufficiency, then they must justify at the time appointed, whether excepted to or not. In other cases, where the defendant has *not given such notice* of justifying the bail at the time of putting

them in, but has put the bail in in due time, the bail must justify within the time limited for that purpose, if they be excepted to, but not otherwise. When bail are not put in in due time, they must justify, whether they are excepted to or not.

If the bail do not justify within the time limited for that purpose, and no further time be given, they are out of Court, and the bail bond may be assigned. The Court, in such a case, will, upon application, order their names to be struck out of the bail-piece; but whilst their names remain on the bail-piece, they are still considered bail for the purpose of rendering their principal.

Before a judge at chambers, bail are thus justified:—As the bail-piece remains at the judge's chambers, let the bail accompany you there, and the judge's clerk will swear them, and take their recognizance. Pay him 2*s*. in term, 4*s*. in vacation.

In Court, bail are thus justified: The evening before, desire the judge's clerk to bring the bail-piece into Court, and he will accordingly do so, and deliver it to the master; or the judge's clerk will give you the bail-piece, and you may deliver it the next morning to the master in Court; pay the judge's clerk 2*s*. 6*d*. If the bail-piece be not in Court the bail cannot justify. Make an affidavit of service of the notice of justification, with a copy of the notice annexed. If you have accompanied the notice of bail with an affidavit by the bail of their sufficiency, let the affidavit of service of the notice of justification also state that fact, and let a copy of the notice of bail and the affidavits of sufficiency be annexed. The affidavit should state how the service was made; and must be properly entitled. If the service of the affidavit was originally defective, but was rendered sufficient by the plaintiff's attorney having acknowledged the receipt of it, or by his having consented to waive the improper service, or otherwise, then let the affidavit state the facts accordingly. Give the affidavit to counsel, with a motion paper indorsed to "move to justify the within bail," who will move it accordingly. Attend at Westminster with the bail, and they will be called in their turn, and sworn; and if they be allowed to justify, pay the officer 9*s*. They will be allowed to justify, as a matter of course, unless opposed. The Bail Court is in Westminster Hall, at Westminster; and one of the puisne judges of the Court of King's Bench attends there every morning before ten o'clock, usually at half-past nine, for the purpose of

taking the justification of bail. The bail should be in attendance at the Court by half-past nine in the morning, and if bail be not ready, and papers delivered to counsel by ten o'clock, no bail is to be taken after that hour. Where there are but few bail, the bail must be very punctual, for, if not ready, the judge will not wait even till ten o'clock; but when bail are numerous, the exact time of their attendance is not usually inquired into; and sometimes the judge has even returned to the Court, to prevent expense and inconvenience. On the last day of term, bail may justify at the rising of the Court.

Each of the bail must swear that he is a housekeeper or freeholder, and worth double the sum sworn to, after his just debts are paid. Where the sum sworn to, however, exceeds £1000 it is required only that he should justify for £1000 more; as, if the sum is sworn to be £1500, each of the bail must justify for £2500.

Opposing the Justification of Bail.

Bail are allowed to justify, as a matter of course, unless opposed. If you intend to oppose the justification, deliver a brief to counsel for that purpose, and he will oppose them, either by examining them, after they are sworn, as to any matter of objection you may have suggested in the brief, or as to the matters of any affidavit with which you may have furnished him, (which must first, however, be given in to the clerk of the papers, and read,) or by shewing some defect in the notice of bail or justification, or some irregularity in the service of it. If an affidavit be used against bail, it must set forth the particular objections intended to be relied on against them; merely stating matters of report and general opinion will not suffice.

The usual grounds of opposition to bail, are as follow:

1. That there is some defect in the notice of bail.

2. That there has been some irregularity in the service of the notice of bail.

3. That there is some defect in the notice of justification.

4. That there has been some irregularity in the service of the notice of justification; as, not served in time, or after nine o'clock at night, or the like.

5. That no bail-bond has been taken, and that an action for an escape has been brought against the sheriff.

6. That the bail are not housekeepers or freeholders.

7. That they are not worth double the sum indorsed on the writ (or if that sum exceed £1000, then £1000 in

addition to it,) after payment of all their just debts; as, that they are uncertificated bankrupts; or have been bankrupts a second time, and have not paid 15*s.* in the pound under their second commission, or insolvent debtors, and have not paid 20*s.* in the pound on the debts inserted in their schedule.

8. That they are foreigners, and have no property in this country. Yet a *native* of England has been allowed to justify, in respect of property partly in England and partly abroad.

Any person having privilege of parliament will not be allowed to justify, on account of his privilege from arrest: so, a person entitled to privilege as one of the servants in ordinary of the king, or a domestic servant of a foreign ambassador, will not be allowed to justify.

9. That they have been bail before, and know not in how many actions, or for what sums.

10. That they have been before rejected as bail.

There is a book kept by the master containing the names of such bail as have been rejected for insufficiency, prevarication, or the like, and are not deemed proper persons to become bail; and that the name of the bail is inserted in this book, is in general considered so conclusive an objection to him, that the Court will not allow him to justify.

11. That they do not know the defendant. This, however, is but a mere circumstance of suspicion, and may be satisfactorily explained

12. That they are attorneys of this or some other Court; or the clerks (whether articled or not) of such an attorney; and it makes no difference, that they are not the clerks of the defendant's attorney: the plaintiff may, indeed, if he chooses, treat such bail as a *nullity*, if they be *practising* attorneys, or clerks of practising attorneys.

13. That they are sheriff's officers, bailiffs, or other persons concerned in the execution of process: and this rule extends to Marshalsea Court officers, and all other officers having the execution of the process of any Court, and to the keeper of the Poultry Compter, and the like.

14. That they have been in the pillory for perjury; and they may be asked this question; but it is no objection that the bail is a gaming-house keeper.

15. That they have been outlawed after judgment.

Costs of Opposition.

If there have been three notices of justification, the plaintiff is entitled to his costs, before the bail are permitted

to justify. In practice, it is usual in such a case to deposit a sum of money (generally £5,) with the master in Court, to satisfy the amount of the costs when taxed, unless indeed the plaintiff's attorney consent to take the defendant's attorney's undertaking for the payment of them; but if a plaintiff alarm bail who have been put in, and thus prevent them from justifying, the Court will compel him to pay the costs of putting them in.

Further Time for Justifying.

When an order is made for further time, you must serve a new notice of justification (unless otherwise ordered by the Court or judge) before three o'clock in the afternoon of the same day, and the affidavit of service must state at what hour it was served. Draw up your rule in the evening, and serve it. Have the rule in Court, and be prepared with an affidavit of the service thereof, when the bail afterwards come up to justify.

Rule of Allowance.

After the bail have justified, go the same evening, or as soon afterwards as you conveniently can, to the rule office, and draw up a rule of allowance with the clerk of the rules; pay 4*s.* 6*d.* and serve a copy of it upon the plaintiff's attorney; for until this rule has been obtained and served, the bail are not deemed perfected, and the plaintiff may proceed against the sheriff or upon the bail bond, even although he were present and opposed the bail at the time they justified. If the rule cannot, on account of pressure of business, be obtained immediately after the bail have justified, and the time for justifying bail has expired, a written notice of the justification, and that the rule for allowance will be served as soon as the same can be obtained, should be immediately served on the plaintiff's attorney.

Filing Bail-piece.

The bail-piece is given to the master in Court, at the time the bail justify; and he carries it with him to his office. Call, therefore, at the master's office, and his clerk will give you the bail-piece; (or if the bail have not justified at chambers, the judge's clerk will give it to you); pay him 1*s.*; take it then to the office of the signer of the writs, and file it with him, for the doing of which the rule of allowance will be his authority.

Fraud, &c. in procuring Justification, &c.

If any fraud or malpractice have been used in procuring the justification of the bail, and which was not known to the plaintiff, or his attorney, at the time, the Court or a judge, upon application, will, in general, set aside the rule of allowance; in which case, you may immediately proceed against the sheriff or upon the bail bond.

If the bail forswear themselves, they may be indicted for the perjury; and if the defendant, or his attorney, have been concerned in procuring them to do so, the Court, perhaps, would punish them in a summary way. But the Court will not, in such a case, set aside the rule of allowance; at least, unless it appear that the defendant, or his attorney, were privy to the fraud.

If bail personate other persons, it is a felony, whether committed in Court, &c. or before a commissioner. And where they had merely assumed feigned names, the Court ordered that the bail and the attorney should stand in the pillory.

Bail put in in the Country.

The chief justice, or one or more of the puisne judges of the Court of King's Bench, grant commissions to such persons as they shall think fit (not being attorneys) in the several counties of England and Wales, and in the town of Berwick-upon-Tweed, to take all such recognizances of bail as any person shall be desirous to acknowledge before them, in any action depending in the said Court, in such manner and form as the justices of the said Court are used to take the same; so, any judge of assize, in his circuit, may take such recognizance; and the recognizance or bail-piece so taken, shall be of the like effect, as if the same were taken, *de bene esse*, before one of the judges of the Court.

In the King's Bench, the bail are thus put in: Make out a bail-piece on a plain piece of parchment. Also, if the bail reside at a greater distance than ten miles from London or Westminster, write out an affidavit or affidavits of justification on plain paper, as prescribed by the late rules; or it may be according to the old form, stating that the bail are housekeepers or freeholders, and worth double the sum sworn to, over and above what will pay all their just debts. Take the bail-piece and affidavit or affidavits to a commissioner of the Court for taking recognizances, and let the bail accompany you. It is not

necessary that both the bail should justify before the same commissioner. The commissioner will then take their recognizance; pay him 2*s*.; and at the same time let the bail swear the affidavit or affidavits of justification before him. Next, write out an affidavit of the due acknowledgment of the recognizance or bail-piece on plain paper, and let it be sworn before a commissioner of this Court for taking affidavits, (not being the defendant's attorney) by the attorney or person who accompanied the bail to the commissioner. This affidavit of caption need not be sworn before the same commissioner as the affidavit of justification. It may, if you wish, be made before a judge of the Court in town. These affidavits must state in the jurat the names of all the deponents, and the place of swearing. Lastly, annex these affidavits to the bail-piece, and send them without delay to your agent in town.

The recognizance or bail-piece so taken, must be transmitted to one of the judges of this Court, who, upon affidavit made of the due taking of such recognizance or bail-piece, by some person present at the taking thereof, shall receive the same, upon payment of the usual fees; which recognizance or bail-piece so taken and transmitted, shall be of the like effect as if the same were taken *de bene esse* before one of the judges: and the bail-piece must, it seems, be so transmitted and filed within eight days inclusive after the arrest of the defendant.

As soon as the agent in town receives the bail-piece, he should take it and the affidavit of the due acknowledgment of the recognizance, to the judge's chambers, and file them there; pay 5*s*. in term, and 1*s*. more in vacation.

After filing the bail-piece, &c. serve a notice thereof on the agent of the plaintiff's attorney.

If the bail be excepted to, it must be within *twenty* days after notice of bail has been given; or within *one* day before the time for putting in and justifying the bail has expired, in cases where the defendant has given notice of justifying the bail at the time of putting them in, and has accompanied the notice with affidavits by them of their sufficiency; and the exception is entered in the bail book at the judge's chambers in the ordinary way. If no exception be entered within the time limited, take the bail-piece from the judge's chambers, and file it with the signer of the writs.

Notice of Justification.

Notice of justification must be given within the same time as when bail are put in in town, and in the same

manner, excepting that where the bail are to justify by affidavit, that fact must be stated in the notice.

The mode of justifying by affidavit is this: The evening before, desire the judge's clerk to bring the bail-piece or affidavit into Court. Make an affidavit of service of the notice of justification, as in ordinary cases; and inclose it and the affidavit or affidavits of justification in a motion paper, and give them to counsel to move. The motion must be made before ten o'clock. If the bail are opposed, it must be by cross affidavits, and the judge will give time to answer the matters of the affidavits; or, if defective, time to have the defect remedied, but the defendant's attorney will have to pay the costs of the amendment. After justification, draw up the rule of allowance and serve it, and file the bail-piece with the signer of the writs, as in ordinary cases.

Bail put in and Justified, when the Defendant is in Custody.

Although the defendant be in custody of the sheriff or marshal, after the expiration of the eight days after the arrest, yet special bail may be put in and perfected at any time before final judgment.

In *term* time, this is done in the usual way, except that you mention in the bail-piece that the defendant is in custody, and of whom, and make the like mention in the notice of justification, &c.; and also, except that the notice of bail and of justification may in all cases be incorporated in one; and also, except that the bail may be put in and justified at the same time, upon a two days' notice of putting in and justifying, and this, notwithstanding the late rule, requiring a four days' notice for that purpose, in other cases where the defendant intends justifying bail at the same time at which they are put in. No exception is necessary, or indeed usual, and the rule which entitles the defendants to have the recognizance entered into under the regulation out of Court, without further justification, if a one day's notice of exception be not entered by the plaintiff, does not apply to this case of a prisoner. The bail justify as in other cases. After you have served the copy of the rule of allowance, take the rule to the marshal's office in the King's Bench prison (if the defendant be in the custody of the marshal), and it will be a sufficient warrant to him to discharge the defendant; and the same if the defendant be in the custody of the sheriffs of London or Middlesex. But if the defendant be in the custody of the sheriff of any other county, as the rule in

that case contains an order, not for his discharge, but for a supersedeas merely, write out a supersedeas on plain parchment, and take it, together with the rule of allowance, and also the bail-piece, to the signer of the writs, who will sign it; pay 1*s.* 8*d.*; get it sealed, pay 7*d.* Lodge the writ with the gaoler, who will thereupon immediately discharge the defendant.

The following is the form of the supersedeas:—

William the Fourth, by the grace of God, of the United Kingdom of Great Britain and Ireland king, defender of the faith, to the sheriff of , greeting:

Whereas C. D. is detained in our prison under our custody, by virtue of a writ of capias issuing out of our Court of King's Bench, [*or* Common Pleas, *or* Exchequer of Pleas,] at Westminster, to you directed, and dated the day of , A. D. , to answer A. B. in an action on promises, [*or as the plea is,*] and because it sufficiently appears to our said Court before us [*or in Common Pleas,* "to our said justices at Westminster," *or in Exchequer,* "to our barons here,"] that the said C. D. hath found good and sufficient bail to answer the said A. B. in the plea aforesaid; therefore we command you, that if the said C. D. be detained in our prison under your custody by virtue of the said writ, and for no other cause, then do you immediately discharge the said C. D. out of your custody, and permit him to go at large, as you will answer the contrary at your peril.

Witness, , [*name of chief justice, or chief baron,*] at Westminster, this day of , in the year of our reign.

In *vacation* the mode is different. By 43 Geo. III. c. 46, s. 6. a defendant in custody may put in and justify bail, in vacation, before a judge of the Court from which the process issued whereupon he was arrested, upon due notice thereof being given to the plaintiff's attorney; and such judge may thereupon order a rule to issue for the allowance of such bail, and may further order the defendant to be discharged out of custody by writ of supersedeas or otherwise, according to the practice of such Court, in like manner as the same is and may be done by an order of the Court in term time. This applies only to arrests on *mesne* process out of the superior Courts, but it seems a *habeas corpus* for the removal of a cause from an inferior Court is within the act. Give notice that you will put in

and justify bail as before directed. At the time specified in the notice, attend at the judge's chambers, and wait there an hour; if at that time the opposite attorney do not attend to oppose the justification, the bail will be allowed to justify as of course, upon producing the affidavit of service of notice of justification; but if the opposite attorney attend, the bail may be opposed and examined in the manner before stated. If the bail be allowed to justify, the judge will make an order directing the clerk of the rules to draw up a rule of allowance. Draw up the rule with the clerk of the rules; pay him 6*s.*; and serve a copy of it on the opposite attorney. Then take the rule to the King's Bench prison (if the defendant be in custody of the marshal, or of the sheriffs of London or Middlesex), or sue out a supersedeas (if he be in custody of the sheriff of any other county, &c.), as before directed.

Paying Money into Court in lieu of Special Bail.

Where the defendant has, *in lieu of bail to the sheriff, deposited in his hands* the sum indorsed on the writ, and £10 for costs, to answer the costs up to the eighth day inclusive after the arrest, and the sheriff has paid these into Court, as he is bound to do, the defendant, instead of putting in and perfecting special bail, may allow such sums, together with the additional sum of £10, to be paid into Court by the defendant as a further security for costs, to remain in Court, to abide the event of the suit. In other cases, where the defendant has *not* made such deposit with the sheriff, the defendant, instead of putting in and perfecting special bail, may deposit and pay into Court the sum indorsed on the writ, and £20 as a security for the costs of the action, there to remain to abide the event of the suit. In either case, the defendant must thereupon enter a common appearance within such time as he would have been required to have put in and perfected special bail, or in default thereof the plaintiff may enter such appearance, and the cause may proceed as if the defendant had put in and perfected special bail; and if judgment be given for the plaintiff, he will be entitled, by order of the Court, upon motion, to receive the money so remaining in, or so deposited or paid into the Court, or so much thereof as will be sufficient to satisfy the sum recovered by the judgment and the costs of the application; and if judgment be given for the defendant, or the plaintiff discontinue, or be otherwise barred, or if the sum deposited and paid into Court

be more than sufficient to satisfy the plaintiff, the money so deposited or paid into Court, or so much thereof as shall remain, will, by order of the Court, upon motion, be repaid to the defendant.

In cases where the defendant has paid money into the hands of the sheriff in lieu of bail to him, and is desirous of thus allowing the same to remain in lieu of special bail, he should give notice thereof to the plaintiff's attorney, and pay into Court an additional sum of £10, as a security for costs. This may be done at any time before or on the day allowed for *perfecting* the special bail. To pay into Court this additional £10, where you have deposited money with the sheriff, in lieu of bail to him, or to pay into Court the monies abovementioned to be paid in, in lieu of special bail, leave of the Court is necessary. Such leave may be obtained by a side-bar rule. Make out a præcipe or memorandum of the rule you want. Pay the money into Hoare's bank, in Fleet Street, and get a receipt; take this receipt to the signer of the writs, who will thereupon give you his receipt in exchange. Pay him 2*s.* 4*d.*, or at the rate of 20*s.* per £100, for any greater sum than £10. Then take this receipt and præcipe, or memorandum abovementioned, to the clerk of the rules, who will draw up the rule; pay him 3*s.* 6*d.*, and serve a copy of it on the plaintiff's attorney. After this, the defendant must enter a common appearance, as in other cases, within such time as he would have been required to have put in and perfected special bail; or, in default thereof, plaintiff may enter it for him. Upon this, in the case of a bail bond given, the defendant would be entitled to have it delivered up to be cancelled.

The defendant who has made this deposit and payment into Court may, at any time before issue joined in law or fact, or final or interlocutory judgment signed, receive the same out of Court, by order of the Court, upon putting in and perfecting special bail in the cause, and payment of such costs to plaintiff as the Court may direct.

The defendant also, who has put in and perfected special bail, may, upon motion to the Court, if the Court think fit, deposit and pay into Court the sum which would have been deposited and paid in case the defendant had originally elected so to do, together with such further sum, to answer the costs, as the Court may direct, to abide the event of the suit, and to be disposed of in manner aforesaid; and thereupon the Court will direct a common appearance to be entered for defendant, and an exoneretur to be entered upon the bailpiece.

On the application of the defendant, the Court will make an order that the plaintiff shall be at liberty to take out of Court a part of the sum paid in; and that unless he consent to accept thereof, with costs, in full discharge of the action, the same shall be struck out of the declaration; and that the plaintiff shall not give any evidence at the trial as to that sum.

In case of a judgment for the plaintiff, the money still remaining in Court, then, in order to get it out of Court, give a motion paper with an affidavit of the money having been paid in, and of the judgment being signed, to counsel to move for a rule to shew cause why the plaintiff should not receive all the money out of Court, or, in case the judgment be for less, then so much thereof as will be sufficient to satisfy the sum recovered, and the costs of the application. If a rule be granted, draw it up with the clerk of the rules, and serve a copy of it, as in other cases. Take a copy of the rule to the signer of the writs, who will thereupon pay you the money. The plaintiff is bound to resort to this money in the first instance, and cannot issue execution except for the deficiency, if any, after allowing for such money.

In case of a judgment for the defendant, or if the plaintiff discontinue or be otherwise barred from recovering, or in case the sum in Court be more than enough to pay the plaintiff; then, in order for the defendant to get it or surplus out of Court, give a motion paper with an affidavit of the money having been paid in, and of the judgment, according to the facts, to counsel to move for a rule to shew cause why the money should not be repaid to defendant. If the rule be granted, draw it up with the clerk of the rules, and serve a copy of it as in other cases. Take a copy of the rule to the signer of the writs, who will thereupon pay you the money.

THE DECLARATION

Is the next part of the proceedings, after the observance of such of the previous directions as may be applicable to the particular cause. Previous to 2 Wm. IV. c. 39, the plaintiff could not declare before the return of the writ, and where the proceedings are not against the *person*, the plaintiff could not have delivered or filed his declaration until the defendant had actually appeared. And now in *non-bailable* cases, the writ of summons, or writ of summons

and distringas thereon, not being a process against the person, the plaintiff cannot declare until an appearance has been actually entered, and then it must be *absolutely*. In *bailable* actions, when the defendant is not in actual custody, the plaintiff, at the expiration of eight days after the execution of the writ of capias, inclusive of the day of such expiration, may declare *de bene esse*, in case special bail has not been perfected. And if there be several defendants, and one or more of them has been served only and not arrested, and the defendant or defendants so served have not entered a common appearance, the plaintiff may enter a common appearance for him or them, and declare against him or them in chief, and *de bene esse* against the defendant or defendants who have been arrested, and who have not appeared, by perfecting special bail. No declaration, however, can, in any case, either *de bene esse* or absolutely, be filed or delivered between the 10th August and 24th October.

When you declare *de bene esse*, as you may do in *bailable* cases, indorse on your declaration a *notice to plead* in four days, if the action be laid in London or Middlesex, *and* the defendant live within twenty miles of London,—or in eight days, if the action be laid in any other county than London or Middlesex, *or* the defendant live above twenty miles from London. The following is the form of notice.

"This declaration is delivered conditionally, until special bail be [put in and] perfected; and the defendant is to plead hereto in four days, [*or* eight days, *as the case may require*,] otherwise judgment."

Care should be taken to state that it is delivered or filed "*conditionally*," otherwise it will be irregular. This indorsement, however, is not essential, where the declaration is filed; for the notice of filing it is also a notice to plead.

The delivery or filing of the declaration *de bene esse* becomes absolute upon special bail being put in and perfected; but if special bail be not put in and perfected, the plaintiff must then relinquish or suspend his proceedings on the declaration, and proceed either against the sheriff, or on the bail bond, as before directed. The plaintiff is not compellable to declare at all, until the defendant have appeared. But it is advisable to declare *de bene esse*, to expedite the cause, and by omitting to do so,

he might lose the benefit of the bail bond or attachment standing as a security.

The defendant, by taking the declaration out of the office, will waive any irregularity of its having been filed, and he has the opportunity of seeing the exterior of the declaration without taking it out; and in *non-bailable* actions, if the defendant has not appeared, when the time limited has expired, the plaintiff must, in order to declare, *enter an appearance* for the defendant in pursuance of the statute, and then declare against him *absolutely*.

The notice to plead absolutely runs thus—

"The defendant is required to plead hereto in four days [or eight days, *as the case may require*], otherwise judgment."

Some doubts exist as to the time within which the plaintiff *must* declare in actions commenced by the new process of writ of *summons*, or writ of *capias;* however, he must declare before the end of the term next after the eighth day, inclusive, from the execution of the process, otherwise a *nonpros* may, after a four-day demand of declaration, be signed against him. If no *nonpros* be obtained, then he may declare at any time within a year next after the eighth day, inclusive, from the execution of the process, unless otherwise ordered by the Court or a judge; but if he do not declare within that period, he will be deemed out of Court. It is clear that in proceedings against a prisoner in custody at the plaintiff's suit, he must be declared against before the end of the term next after the arrest or detainer.

If the plaintiff be not ready to declare within the time limited, obtain from the clerk of the rules a side-bar rule for time to declare, until the first day of the following term; pay 1*s*. 6*d*. and serve a copy upon the defendant's attorney. You may afterwards obtain rules for further time, from the beginning to the end of the term, and from the end of one term to the beginning of the next, as often as you think necessary, in the same manner. The defendant, on the other hand, if he wish to compel the plaintiff to declare, may obtain from the clerk of the rules, upon counsel's signature, a rule to declare before the end of the term; and, after serving it upon the plaintiff's attorney or agent, if he do not comply with such rule, the defendant may then, in the same way, obtain a peremptory

rule to declare within a certain time, and if the plaintiff do not declare within the time so limited, the defendant may, after a four-day written demand of declaration, sign judgment of *nonpros*. But now, it is not *necessary* for a defendant to give a rule to declare, except upon removals from inferior courts, in which latter case the rule to declare may be given within four days after the end of the term in which the writ is returned. A rule to declare peremptorily may be in any case absolute in the first instance. This term "peremptorily," only prevents a plaintiff from taking out more rules for time to declare, and therefore, if the defendant signs judgment of *nonpros* after the rule to declare has run out, but the plaintiff has declared in the interim, the judgment is irregular.

How to Declare.

Engross your declaration upon plain paper. It is no objection that it is partly written and partly printed, and it is the common practice so to engross it. Indorse on it the notice to plead, as directed before, when you declare absolutely. In some cases also, indorse on it a demand of plea, as follows:

"The plaintiff demands a plea hereon, by D. A. defendant's attorney or agent."

If the declaration is to be filed, charge, on the back of it, 4*d*. per folio of seventy-two words, and 4*d*. for the warrant of attorney. As the practice may require, file with the clerk of the declarations in the King's Bench office, and give the defendant's attorney notice of your having done so; or deliver it to the defendant's attorney.

To avoid unnecessary expense to parties, by reason of the *length* of declarations in actions on bills of exchange, promissory notes, and causes of action recoverable under the common counts, the Courts have prescribed forms of declarations in such actions, and ordered that the declaration shall not exceed in length such of the forms as may be applicable to the case; and if it does, then that no costs of the excess shall be allowed the plaintiff if he succeeds, and the costs of the excess incurred by the defendant shall be taxed and allowed to him, and be deducted from the costs allowed to the plaintiff; and on the taxation of costs, as between attorney and client, no costs are allowed to the attorney in respect of such excess of length; and, in case any costs shall be payable by plaintiff to

defendant, on account of such excess, the amount thereof shall be deducted from the attorney's bill. And, as another protection to the defendant against the unnecessary length of the declaration, it is a rule that no costs shall be allowed on taxation to the plaintiff, upon any counts or issues upon which he does not succeed, and that the costs of all issues found for the defendant, shall be deducted from the plaintiff's costs. The Court or a judge also may order the master to strike out superfluous counts before plea pleaded. And it is now becoming a practice for the judge at the trial, in the case of a declaration containing unnecessary counts, to compel the plaintiff to elect to take a verdict on one or more of them only.

The following examples of declarations will exemplify these rules in ordinary cases:

1. *Beginning and Conclusion of a Declaration after Summons*

In the King's Bench [*or* Common Pleas, *or* Exch. of Pleas.]
On the day of , in the year of our Lord 1833.

—— [*venue*] to wit. A. B. by P. A. his attorney [*or* in his own proper person], complains of C. D. who has been summoned to answer the said A. B. of a plea of trespass on the case upon promises, [*or* of breach of covenant, *or* on the case, *or* of trespass, *or if in debt say*, of a plea of debt, and he demands of him the sum of £ (*the aggregate amount of the sums demanded in the subsequent part of the declaration,*) which he owes to and unjustly detains from him.] For that whereas, &c. [*here state the subject-matter of the declaration, and conclude thus :*] To the damage of the plaintiff of £ , and therefore he brings his suit, &c. [*If the action be by or against a party in a representative character, as in the case of executors, &c. this form must be altered accordingly.*]

2. *After a Writ of Capias, where Defendant is not in Custody.*

In the King's Bench [*or* Common Pleas, *or* Exch. of Pleas.]
On the day of , in the year of our Lord 1833.

—— [*venue*] to wit. A. B. by P. A. his attorney [*or* in his own proper person] complains of C. D., who has been arrested at the suit of the said A. B. on a plea of trespass on the case upon promises, [*or* of breach of covenant, *or* on the case, *or* of trespass, *or if in debt, say,* of a plea of debt, and he demands of him the sum of £ (*the aggregate amount of the sums demanded in the subsequent part*

of the declaration,) which he owes to and unjustly detains from him.] For that whereas [*here state the subject-matter of the declaration, and conclude thus:*] To the damage of the plaintiff of £ , and therefore he brings his suit, &c. [*If the action be by or against a party in a representative character, as in the case of executors, &c. this form must be altered accordingly.*]

3. *The like where the Defendant is in Custody.*

In the King's Bench [*or* Common Pleas, *or* Exch. of Pleas.]
On the day of , in the year of our Lord 1833.

—— [*venue*] to wit. A. B. by P. A. his attorney [*or* in his own proper person] complains of C. D. being detained at the suit of the said A. B. in custody of the sheriff [*or* marshal of the Marshalsea of the Court of King's Bench, *or* warden of the Fleet] in a plea of trespass on the case upon promises, [*or* of breach of covenant, *or* on the case, *or* of trespass, *or if in debt, say,* of a plea of debt, and he demands of him the sum of £ (*the aggregate amount of the sums demanded in the subsequent part of the declaration*), which he owes to and unjustly detains from him.] For that whereas, &c. [*here state the subject-matter of the declaration, and conclude thus:*] To the damage of the plaintiff of £ , and therefore he brings his suit, &c. [*If the action be by or against a party in a representative character, as in the case of executors, &c. this form must be altered accordingly.*]

4. *The like, after the Arrest of one or more of the Defendants, and where one or more other Defendant or Defendants has been served only and not arrested.*

In the King's Bench, [*or* Common Pleas, *or* Exch. of Pleas.]
On the day of , in the year of our Lord 1833.

—— [*venue*] to wit. A. B. by P. A. his attorney, [*or* in his own proper person], complains of C. D., who has been arrested at the suit of the said A. B. [*or* being detained at the suit of the said A. B. &c. *as in the preceding form*], and E. F., who has been served with a writ of *capias* to answer the said A. B. in a plea of trespass on the case upon promises, [*or* of breach of covenant, *or* on the case, *or* of trespass, *or if in debt, say,* of a plea of debt, and he demands of him the sum of £ , (*the aggregate amount of the sums demanded in the subsequent part of the declaration*), which he owes to and unjustly detains from

him]. For that whereas, &c. [*here state the subject-matter of the declaration, and conclude thus:*] To the damage of the plaintiff of £ , and therefore he brings his suit, &c. [*If the action be by or against a party in a representative character, as in the case of executors, &c. this form must be altered accordingly.*]

5. *Common Indebitatus Count, in Assumpsit, for Goods Sold, Work and Materials, Monies Lent, &c., Interest and Account Stated.*

[*Commence as in the preceding forms, as the case may require.*] For that whereas [*or if it be not the first count, say,* "And whereas also,"] the defendant, on the day of , A.D. , in the county of , [*or if the county has been already mentioned, say,* " in the county aforesaid,"] was indebted to the plaintiff in £ , for, [&c. *here state any cause of action you may have recoverable under the indebitatus count. If you have arrested the defendant for work done in any particular character, such as attorney or otherwise, or for any other cause of action recoverable under this count, you should include a statement of the cause of action in the declaration, similar to that in the affidavit. (See the various forms of statements of causes of action in affidavits to hold to bail, which may be readily made applicable to the form of the declaration.) After stating this cause of action proceed thus:* And in £ for] the price and value of goods [*or* goods and chattels,] sold and delivered [*or* bargained and sold] by the plaintiff to the defendant, at his request: and in £ for work done, and materials for the same provided by the plaintiff for the defendant, at his request: And in £ for money lent by the plaintiff to the defendant, at his request: And in £ for money paid by the plaintiff for the use of the defendant, at his request: And in £ for money received by the defendant for the use of the plaintiff: And in £ for interest, for the forbearance by the plaintiff to the defendant, at his request, of money due and owing from the defendant to the plaintiff: And in £ for money found to be due from the defendant to the plaintiff on an account stated between them*. And the defendant afterwards, on the day and year [last] aforesaid, in the county aforesaid, in consideration of the [last-mentioned] premises respectively, then and there promised the plaintiff to pay the said [last-mentioned] several monies, respectively, to the plaintiff on request: Yet the defendant hath disregarded his promise,

[or promises,] and hath not paid any of the said monies, or any part thereof. To the damage of the plaintiff of £ , and therefore he brings his suit, &c.

6. *Indebitatus Count in Debt.*

[*Commencement as usual in debt, and then proceed as in the preceding form, from its commencement to the *, and then thus:*] to be respectively paid by the defendant to the plaintiff, on request: Whereby, and by reason of the non-payment of the said several monies respectively, an action hath accrued to the plaintiff, to demand and have of and from the defendant the said several monies respectively, amounting to the sum of £ , above demanded: Yet the defendant hath not paid the said sum above demanded, or any part thereof. To the damage of the plaintiff of £ , and therefore he brings his suit, &c.

7. *Declaration, in Assumpsit, by Payee against Maker of a Promissory Note.*

For that whereas the defendant, on the day of , A.D. , in the county of , made his promissory note in writing, and thereby promised to pay to the plaintiff £ , [months] after the date thereof, which period has now elapsed; and then and there delivered the said note to the plaintiff, and promised the plaintiff to pay the same, according to the tenor and effect thereof. [*Add an indebitatus count, upon the consideration for the bill, and for money lent, &c. and breach, &c. as before.*]

8. *The like, in Debt.*

For that whereas the defendant, on the day of , A. D. , in the county of , made his promissory note in writing, and thereby promised to pay to the plaintiff £ , for value received, [months] after the date thereof, which period has now elapsed; and then and there delivered the said note to the plaintiff: And the defendant did not pay the said note on the day when it became due, or at any time afterwards. [*Add an indebitatus count, &c. as before.*]

9. *The like, on a Note payable on Demand.*

For that whereas the defendant, on the day of , A.D. in the county of , made his promissory note in writing, and thereby promised to pay the plaintiff £ on demand: But the defendant did not pay the same, although payment thereof was duly demanded of

the defendant, according to the tenor and effect of the said note. [*Add indebitatus count, &c. as before, No.* 5.]

10. *The like, on a Note payable at a Banker's.*

For that whereas the defendant, on, &c. in the county of , made his promissory note in writing, and thereby promised to pay to the plaintiff, at Messrs. B. B. and Co.'s, bankers, London, [*as in the note,*] £ , [months] after the date thereof, which period has now elapsed; and then and there delivered the said note to the plaintiff, and promised the plaintiff to pay the same according to the tenor and effect thereof: But the said Messrs. B. B. and Co. did not, nor did the defendant or any other person pay the said note, although the same was presented at the said Messrs. B. B. and Co.'s, bankers, London, aforesaid, on the day when it became due: Of which the defendant then and there had notice. [*Add indebitatus count, &c. No.* 5.]

11. *The like, on a Note payable after Sight.*

For that whereas the defendant, on, &c. in the county of , made his promissory note in writing, and thereby promised to pay to the plaintiff £ , [months] after sight thereof; and then and there delivered the said note to the plaintiff, and promised the plaintiff to pay the same, according to the tenor and effect thereof: And the plaintiff avers, that afterwards, on the day and year aforesaid, in the county aforesaid, the defendant had sight of the said note, and that [months] from such sight have now elapsed. [*Add indebitatus count, &c. No.* 5.]

12. *The like, on a Note for less than Five Pounds.*

For that whereas the defendant, on, &c. at [120, Whitechapel Road,] that is to say, in the county of , made his promissory note in writing, and signed the same in the presence of W. W., who then and there duly attested such signature, and subscribed his name as a witness thereto: and the defendant thereby promised to pay to the plaintiff, by the name and description of , of , (being the name and then place of abode of the plaintiff, to whom the money in the said note specified was to be paid,) four pounds, [days] after the date thereof, which period has now elapsed; and then and there delivered the said note to the plaintiff, and promised the plaintiff to pay the same according to the tenor and effect thereof. [*Add indebitatus count, &c. No.* 5.]

13. *The like, on a Note payable by Instalments, where the whole became due upon one default.*

For that whereas the defendant, on, &c. in the county of , made his promissory note in writing, and thereby promised to pay to the plaintiff £25, by the instalments and in manner following; (that is to say) £10 on the day of then next, £10 on the day of then next, and the remaining £5 on the day of then next; and that in case default should be made in payment of any or either of the said instalments, the whole of the said sum of £25, or so much thereof as should be remaining unpaid, at the time of such default, should become due and payable; and the defendant, on the day and year first aforesaid, in the county aforesaid, delivered the said note to the plaintiff, and promised the plaintiff to pay the same, according to the tenor and effect thereof: And the plaintiff avers, that afterwards, on the said, &c. in the county aforesaid, default was made by the defendant in payment of the first of the said instalments, whereby, and according to the tenor and effect of the said note, the defendant became liable to pay to the plaintiff the said sum of £25 on request. [*Add indebitatus count on the consideration for the note, and for money lent, &c. and breach, &c. as No. 6.*]

14. *The like, where all Instalments are due by lapse of Time.*

For that whereas the defendant, on, &c. in the county of , made his promissory note in writing, and thereby promised to pay to the plaintiff £25, by the instalments and in manner following: (that is to say) £10 on the day of then next, £10 on the day of then next, and the remaining £5 on the day of then next; [and that in case default should be made in payment of any or either of the said instalments, the whole of the said sum of £25, or so much thereof as should be remaining unpaid at the time of such default, should become due and payable;] and the defendant, on the day and year first aforesaid, in the county aforesaid, delivered the said note to the plaintiff, and promised the plaintiff to pay the same, according to the tenor and effect thereof: And the plaintiff avers, that the several times for payment of the said several instalments have now respectively elapsed. [*Add a count, &c. as directed in the last.*]

15. *The like, on Note payable by Instalments, where whole not due on one Default.*

For that whereas the defendant, on, &c. in the county of , made his promissory note in writing, and thereby promised to pay to the plaintiff £25, by the instalments and in manner following; (that is to say) £10 on the day of then next, £10 on the day of then next, and the remaining £5 on the day of then next; and the defendant, on the day and year first aforesaid, delivered the said note to the plaintiff, and promised the plaintiff to pay the same, according to the tenor and effect thereof: And the plaintiff avers, that afterwards, on the said, &c. [&c.] in the county aforesaid, the first of the said instalments of £10 became and was due and payable from the defendant to the plaintiff, according to the tenor and effect of the said note. [*Add indebitatus count, &c.*]

16. *The like, by Indorsee against Maker.*

For that whereas the defendant, on, &c. in the county of , made his promissory note in writing, and thereby promised to pay to the order of E. F. £ , [months] after the date thereof, which period has now elapsed; and then and there delivered the said note to the said E. F., who then and there indorsed the same, [to G. H. who then and there indorsed the same, *so stating any other indorsement,*] to the plaintiff: And the defendant then and there promised the plaintiff to pay him the amount of the said note, according to the tenor and effect thereof, and of the said indorsements. [*Add indebitatus, count, &c. No.* 5.]

17. *The like, by Indorsee against Payee.*

For that whereas one E. F., on, &c. in the county of , made his promissory note in writing, and thereby promised to pay to the order of the defendant £ , [months] after the date thereof, which period has now elapsed; and then and there delivered the said note to the defendant, who then and there indorsed the same to the plaintiff: And the said E. F. did not pay the said note, although the same was there presented to him on the day when it became due: Of which the defendant then and there had due notice. [*Add an indebitatus count, &c.*]

18. *The like, by Indorsee against Indorser.*

For that whereas one E. F., on, &c. in the county of , made his promissory note in writing, and thereby promised to pay to the order of G. H. pounds, [months] after the date thereof, which period has now elapsed; and then and there delivered the said note to the said G. H., who then and there indorsed the same to the defendant, who then and there indorsed the same to the plaintiff: And the said E. F. did not pay the said note, although the same was there presented to him on the day when it became due: Of which the defendant then and there had due notice. [*Add an indebitatus count, &c.*]

19. *The like, by Payee against Drawer of Check.*

For that whereas the defendant, on the day of , A. D. , in the county of , made his draft, or order, in writing, for the payment of money, called a banker's check, and directed the same to Messrs. B. B. & Co. (*as in the check*) and thereby required the said Messrs. B. B. & Co. to pay to the plaintiff, or bearer, £ , and then and there delivered the same to the plaintiff: And the said Messrs. B. B. & Co. did not pay the said check, although the same was then and there presented to them: Whereof the defendant then and there had due notice. (*Add indebitatus count on the consideration for the check and for money lent, &c. and breach, &c. as ante, Nos. 5, 6.*]

20. *The like, by Bearer against Drawer of Check.*

For that whereas the defendant, on, &c. in the county of , made his draft, or order, in writing, for the payment of money, called a banker's check, and directed the same to Messrs. B. B. & Co., and thereby required the said Messrs. B. B. & Co. to pay to D. D., or bearer, £ , and then and there delivered the same to the said D. D., who then and there transferred and delivered the same to the plaintiff, who still is the bearer thereof: And the said Messrs. B. B. & Co. did not pay the said check, although the same was then and there presented to them: Whereof the defendant then and there had due notice. [*Add indebitatus count for money paid, &c. and breach, &c. as ante, Nos. 5, 6.*]

21. *The like, by Drawer against Acceptor of Inland Bill.*

For that whereas the plaintiff, on the day of , A. D. , in the county of , made his bill of exchange in writing, and directed the same to the defendant; [*if the bill be not directed to the defendant omit this averment as to the direction,*] and thereby required the defendant to pay to the plaintiff £ , [months] after the date thereof, which period has now elapsed: And the defendant then and there accepted the said bill, and promised the plaintiff to pay the same, according to the tenor and effect thereof, and of the said acceptance thereof. [*Add an indebitatus count upon the original consideration for the acceptance, and for money lent, &c., and breach, as ante, Nos, 5, 6.*]

22. *The like in Debt.*

For that whereas the plaintiff, on, &c. in the county of , made his bill of exchange in writing, and directed the same to the defendant and thereby required the defendant to pay to the plaintiff £ , for value received, [months] after the date thereof, which period has now elapsed: And the defendant then and there accepted the said bill, and agreed to pay the same, according to the tenor and effect thereof, and of the said acceptance thereof. But the defendant did not pay the said bill on the day when it became due, or at any time afterwards. [*Add an indebitatus count upon the consideration for the bill, and for money lent, &c., and breach in debt, as ante, No. 6.*]

23. *The like, on Bill accepted payable at a Banker's.*

For that whereas, &c. [*to* "elapsed," *then add*] And the defendant then and there accepted the said bill, payable at Messrs. B. B. & Co's. bankers, *London, and not otherwise or elsewhere,* and promised the plaintiff to pay the same, according to the tenor and effect thereof, and of the said acceptance thereof: But the said Messrs. B. B. & Co. did not, nor did the defendant, or any other person, pay the said bill, although the same was presented at the said Messrs. B. B. & Co's. bankers, *London,* aforesaid, on the day when it became due: Of which the defendant then and there had notice. [*Add an indebitatus count on the consideration for the bill, and for money lent, &c., and breach, as ante, Nos. 5, 6.*]

24. *The like, by Drawer against Acceptor, where Drawer, not being Payee, has taken up the Bill.*

For that whereas, &c. [*to* " elapsed," *then add,*] and then and there delivered the same to the said E. F.: And the defendant then and there accepted the said bill, and promised the plaintiff to pay the same, according to the tenor and effect thereof, and of the said acceptance thereof: Yet he did not pay the amount thereof, although the said bill was there presented to him on the day when it became due; and thereupon the same was then and there returned to the plaintiff: Of all which the defendant then and there had notice. [*Add indebitatus count, &c.*]

25. *The like, by Payee against Acceptor.*

For that whereas, &c. [*to* " elapsed," *then add*] and then and there delivered the same to the plaintiff: And then and there accepted the said bill, and promised the plaintiff to pay the same, according to the tenor and effect thereof, and of the acceptance thereof. [*Add indebitatus count, &c.*]

26. *The like, by Indorsee against Acceptor.*

For that whereas, &c. [*to* " elapsed," *then add*] and the defendant then and there accepted the said bill: And the said E. F. then and there indorsed the same [to G. H., who then and there indorsed the same to I. K., who then and there indorsed the same] to the plaintiff: And the defendant then and there promised the plaintiff to pay him the amount of the said bill, according to the tenor and effect thereof, and of the said acceptance and indorsements. [*Add indebitatus count, &c.*]

27. *The like, by Bearer against Acceptor of Bill payable to Bearer.*

For that whereas, &c. [*to* " elapsed," *then add*] And the defendant then and there accepted the said bill, and the said E. F. then and there duly transferred and delivered the same to the plaintiff, who still is the bearer thereof. [*Add indebitatus count, &c.*]

28. *The like, by Payee against Drawer, on Non-acceptance.*

For that whereas the defendant, on, &c. in the county of , made his bill of exchange in writing, and directed the same to E. F., and thereby required the said E. F. to

pay to the plaintiff £ , [months] after the date thereof, and then and there delivered the same to the plaintiff: And the said bill was then and there presented to the said E. F. for acceptance, but the said E. F. then and there refused to accept the same, whereof the defendant then and there had due notice. [*Add indebitatus count on the consideration for the bill and for money lent, &c. and breach, &c. No. 5.*]

29. *The like, by Payee against Drawer, on Non-payment.*

For that whereas, &c. [*to* "elapsed;" *then add*] and then and there delivered the same to the plaintiff: And the said E. F. did not pay the said bill, although the same was there presented to him on the day when it became due: whereof the defendant then and there had due notice. [*Add an indebitatus count, &c.*]

30. *The like, by Payee against Drawer, on Non-payment of Bill, accepted payable at a Banker's.*

For that whereas, &c. [*to* "elapsed;" *then add*] and then and there delivered the same to the plaintiff; and the said E. F. then and there accepted the said bill, payable at Messrs. B. B. & Co. bankers, *London*, and not otherwise or elsewhere; and the said Messrs. B. B. & Co. did not, nor did the said E. F., or any other person, pay the said bill, although the same was presented at the said Messrs. B. B. & Co. bankers, *London*, aforesaid, on the day when it became due: Of all which the defendant, on the day and year last aforesaid, in the county aforesaid, had due notice. [*Add an indebitatus count, &c.*]

31. *The like, by Payee against Drawer on Non-payment, with averring that Drawee had no effects of Drawer, to dispense with Notice of Non-payment.*

For that whereas, &c. [*to* "elapsed;" *then add*] and then and there delivered the same to the plaintiff: And the said E. F. did not pay the said bill, although the same was there presented to him on the day when it became due: And the plaintiff avers that at the time of making the said bill, and from thence until and at the time when the same was so presented for payment, the said E. F. had not any effects of the defendant, nor had he received any consideration for the acceptance or payment of the said bill, nor hath the defendant sustained any damage by reason of his not having had notice of the non-payment

thereof: Of all which the defendant on, [&c.] there had due notice. [*Add an indebitatus count, &c.*]

32. *The like, by Indorsee against Drawer, on Non-payment.*

For that whereas the defendant, on, &c. in the county of , made his bill of exchange in writing, and directed the same to one E. F., and thereby required the said E. F. to pay to the order of the defendant £ , [months] after the date thereof, which period has now elapsed: And the defendant then and there indorsed the said bill [to G. H., who then and there indorsed the same] to the plaintiff: And the said E. F. did not pay the said bill, although the same was there presented to him on the day when it became due: whereof the defendant then and there had notice. [*Add a count for money paid, &c. and breach, &c.*]

33. *The like, by Indorsee against Indorser, (not also the Drawer) on Non-payment.*

For that whereas one E. F., on, &c. in the county of , made his bill of exchange in writing, and directed the same to one G. H., and thereby required the said G. H. to pay to the order of the said E. F. £ , [months] after the date thereof, which period has now elapsed: And the said E. F. then and there indorsed the said bill [to I. K., who then and there indorsed the same] to the defendant, who then and there indorsed the same to the plaintiff: And the said G. H. did not pay the said bill, although the same was there presented to him on the day when it became due: Whereof the defendant then and there had due notice. [*Add an indebitatus count, &c.*]

34. *The like, by Drawer against Acceptor of Foreign Bill payable in English money.*

For that whereas the plaintiff, on, &c. in parts beyond the seas, (to wit,) at Antwerp, (that is to say,) in the county of , made his bill of exchange in writing, and directed the same to the defendant, and thereby required the defendant to pay to the plaintiff £ , [months] after the date, [&c. *proceed in this case as on an inland bill.*]

The declaration should correspond in the names and number of the parties, in the character in which they sue

or were sued, and in the cause of action, as stated in the writ, and the affidavit to hold to bail. Where, after issue joined in assumpsit for goods sold, the plaintiff added a count for not delivering a bill of exchange, and recovered upon that count only; the Court held the bail to be discharged. If the process be against two, and one only be arrested or served, the plaintiff must in general first outlaw or compel the appearance of the other, before he can declare against the party arrested or served. If he declare against one only, where two are named in the writ, the other may sign judgment of *nonpros*; and the same, if he serve notice of declaration, or even obtain a rule for time to declare against one only, without proceeding against the other. Or if he have holden two defendants to bail on a joint writ, and declare against one only, the bail will be discharged; and if he declare against both severally, the Court would set aside the declaration for irregularity. Upon non-bailable process, the plaintiff may declare against one defendant only, although several be joined in the writ, provided the cause of action be separate, and he drop the proceedings against the others. If the writ be at the suit of one plaintiff only, and the declaration at the suit of two, the Court will set aside the declaration thereon for irregularity, and relieve the bail.

When special bail is put in, or an appearance entered by the defendant, a *copy* of the declaration must be delivered to the defendant's attorney; but, if his abode be unknown, such copy may be left with the clerk of the declarations, and notice given to the defendant. The delivery must take place before ten o'clock at night.

The declaration must be *filed* with the *clerk of the declarations*, where the defendant has not appeared by putting in special bail, or entering an appearance; or where an appearance is entered by the plaintiff for the defendant, and the following notice given.

In the King's Bench [*or* Common Pleas.]

Between A. B. plaintiff, and C. D. defendant.

Take notice, that a declaration was this day [*or* on, &c.] filed with the clerk of the declarations in the King's Bench office [*or in* Common Pleas, "with the prothonotaries, at their office in Tanfield Court,"] in the Inner Temple, London, against you, at the suit of the above-named plaintiff, in an action upon promises [*or* "of debt for £   ," *or as the action is*,] and unless you plead

thereto in four [*or* eight, *as the case may require*,] days from the date hereof, judgment will be signed against you by default.

Dated this day of , 1833.

Yours, &c.

P. A.

plaintiff's attorney [*or* agent.]

To Mr. C. D. the above defendant.

When the declaration is filed, the defendant cannot take it out of the office without paying for it, nor will he be allowed to plead without taking it out. By ruling a defendant to plead, and demanding a plea, therefore, you compel him to pay for the declaration; for, if he do not take the declaration out of the office, and plead within the time limited for that purpose, judgment may be signed as for want of a plea.

The plaintiff must, with every declaration (if delivered), or with the notice of declaration (if filed), containing any common *indebitatus* counts, deliver full particulars of his demand, under those counts, where such particulars can be comprised within three folios: and where the same cannot be comprised within three folios, he must deliver such a statement of the nature of his claim, and the amount of the sum or balance which he claims to be due, as may be comprised within that number of folios.

THE PLEA

Follows the declaration in the course of proceedings. Before the defendant can be compelled to plead, or the plaintiff sign judgment for want of a plea, a *notice* to plead, a *rule* to plead, and, in some cases, a demand of a plea, are necessary.

The notice to plead is necessary, before the plaintiff can sign judgment for want of a plea. It is usually indorsed on the declaration when delivered; but may be given on a separate paper, and served subsequently to the delivery of the declaration; and where the declaration is filed, it is not necessary to indorse it on the declaration.

If the plaintiff declare *absolutely*, the notice must be to plead within *four* days, if the venue be laid in London or Middlesex, *and* the defendant reside within twenty miles of London; or within eight days, if the venue be laid in

any other county, *or* the defendant reside above twenty miles from London; and in default of pleading, as aforesaid, the plaintiff may sign judgment.

If the plaintiff declare *de bene esse* (as he may do upon *bailable* process), the notice must be to plead within four days, if the action be laid in London or Middlesex, *and* the defendant reside within twenty miles of London; or within eight days, if the action be laid in any other county, *or* the defendant live above twenty miles from London; and if the defendant put in bail, and do not plead within the time herein limited, plaintiff may sign judgment for want of a plea. If the defendant were to plead before bail was put in and perfected, the plaintiff might treat the plea as a nullity, and sign judgment, even although the bail were afterwards to justify.

Where the declaration has been filed, these four or eight days are reckoned from the *service* of the *notice* of declaration, and not from the time of filing it; and these four or eight days are reckoned exclusive of the day of giving the notice, and inclusive of the last day, unless the last day be a Sunday, Christmas-day, Good Friday, or a day appointed for a public fast or thanksgiving, in which case they will be reckoned exclusively of that day also; and no plea can be filed or delivered *between the 10th of August and the 24th of October*.

Formerly, unless the plaintiff declared within certain prescribed times, the defendant was entitled to an imparlance, or, in other words, the defendant was allowed another term to plead in. But since 2 Wm. IV. c. 39, in actions commenced under that act, imparlances are wholly put an end to.

To prevent *surprise* on the defendant, if four terms have elapsed since the delivery or filing of the declaration, the defendant must have an entire term's notice to plead, before judgment can be signed for want of a plea, unless the cause was stayed by injunction or privilege, or at the defendant's request. This notice must be given *before* the *first day* of the term; and a rule to plead may be entered, and judgment signed, at any time in the following vacation, as of the preceding term.

Where oyer has been demanded, the defendant may have as many pleading days after it is granted, as he had when he demanded it. So, the defendant has the same time to plead, after the delivery of a bill of particulars, as he had when the summons for it was returnable; and judgment must not be signed till the afternoon of the day after the

delivery of the particulars, unless otherwise ordered by the judge.

If the plaintiff *amend* his declaration, the defendant shall have two days (exclusive of the day of amendment and after payment of costs), to alter his first plea, or plead another. But any plea he may have pleaded, is considered at an end, and he must plead *de novo* to the amended declaration. A new rule to plead is not in any case of amendment necessary. Nor is a demand of plea, if the amendment were after plea pleaded.

A rule to plead must be entered after notice, &c. in all cases, whether the defendant have appeared or not; unless he be bound by a rule of Court, or a judge's order, to plead within a limited time.

Make out a memorandum of the rule on plain paper. Take it to the clerk of the rules, and he will enter it in a book kept for that purpose; pay him 6*d*.

A rule to plead cannot be entered before the declaration is delivered, or filed and notice given. But it may be entered at any time on or after the day on which the declaration is delivered or filed, and care should be taken to enter it four days exclusive before the expiration of the time limited for pleading.

This rule expires in four days exclusive, and Sunday is reckoned, unless it happen to be the last of the four; and the same of Christmas-day, Good Friday, a public fast, &c.

If this rule expire before the time limited for pleading has elapsed, still the plaintiff cannot sign judgment for want of a plea, until the day after the time to plead has expired. But if it expire at the same time with the time for pleading, or after it, the plaintiff may sign judgment the day after the rule to plead expires.

In all cases where the defendant has appeared or put in bail, the plaintiff must *demand a plea*, before he can sign judgment. It is not necessary to make it where the plaintiff has entered an appearance for the defendant, or where the defendant is in custody of the sheriff, in the same suit, although otherwise where he is in custody of the marshal, and notice thereof has been given to the plaintiff, or where the defendant is bound by a judge's order to plead within a limited time, or where the declaration has been amended after plea pleaded.

The demand must be in writing, and delivered by the plaintiff's attorney to the attorney or agent of the defendant, or it may be indorsed on the declaration.

To obtain further time to plead, apply for a judge's summons for that purpose: serve it on the plaintiff's attorney or agent, who will probably attend the first summons, (for, by waiting for a second, he would be merely delaying himself;) and will in general consent to an order, unless he have sufficient grounds for objecting to it. Serve a copy of the order as you did the summons; for, unless it be served, the plaintiff is not bound to notice it, but may sign judgment for want of a plea.

The time to be given is entirely in the discretion of the judge. If it be a month, it is to be considered a lunar month, consisting of four weeks. It is reckoned exclusive of the day of the order, but inclusive of the day on which it expires. And if the defendant do not plead on or before the day on which the time expires, the plaintiff may sign judgment on the morning of the following day, without giving any new rule to plead, or demanding a plea.

The order is usually drawn up upon the terms of pleading issuably, rejoining gratis, and taking short notice of trial or inquiry.

By pleading "issuably," is meant, not a general issue only, but any other plea upon which the plaintiff may take issue, and go to trial upon the merits.

By rejoining gratis is meant, not only as dispensing with the common four-day rule to rejoin, but also with all the consequences of that rule; so that the defendant must, even without a rule to rejoin or demand of rejoinder, rejoin within twenty-four hours after the filing or delivery of the replication.

By short notice of trial, is meant, in country causes, a notice four days at least before the commission day, the one day exclusive, the other inclusive; in town causes, two days' notice seems sufficient, although it is usual to give as much more as the time will admit. And the defendant's being under terms to take short notice of trial, does not entitle the plaintiff to give less than the usual notice of countermand.

Judgment for want of a plea, after the time specified in the notice to plead, and the four days after the rule to plead is entered, and the time allowed for pleading after the plea has been demanded, (where a demand is necessary,) have severally expired, if the defendant have not delivered, entered, or filed a plea, or have delivered, entered, or filed a plea which is a nullity, the plaintiff may sign judgment on the morning of the day after the time limited for pleading has expired, under the previously stated restrictions.

When the time within which the defendant should have

pleaded, has expired, and no plea has been delivered, search for a plea in the books of the office of the clerk of the papers; search also among the pleas you will find there unentered; and if you do not find a plea, then search the general issue book in the office of the clerk of the judgments. If no entry of a plea be found at either office, you may sign judgment.

Bail being put in and (except in the case of a plea in abatement,) justified, or a common appearance entered, either by the defendant or by the plaintiff for him, the defendant's attorney or agent may deliver or file his plea. Before he pleads, however, he must take the declaration (if filed) out of the office; otherwise the plaintiff may treat his plea as a nullity, and sign judgment.

General issue.—If you plead the general issue alone, either enter it in the general issue book, at the office of the clerk of the judgments, and pay 6*d*. or, (which is most usual) engross it on plain paper and deliver it to the plaintiff's attorney or agent. It must not be delivered after ten at night. It need not be signed by counsel, nor indeed need any pleading which concludes to the country be so signed. The following forms will be sufficient examples

Plea of Judgment recovered in Assumpsit, to an Action of Assumpsit.

In the King's Bench, *or* [Common Pleas, *or* Exch. of Pleas.]
On the day of , A. D. 1833.

D. ats B. } And the defendant, by D. A. his attorney, comes and defends the wrong and injury when, &c., and says that the plaintiff ought not to have or maintain his aforesaid action thereof against him, &c. because he says that the plaintiff heretofore, to wit, on the day of , A. D. 1833, [*or* in Term, in the year of our Lord ,] in the Court of our lord the king, before the king himself, [*or if the plea be of a judgment recovered in* C. P. *say*, " before (*name of* C. J.) and his companions his majesty's justices of the bench," *or*, *if in the Exchequer*, *say*, " before the barons of his majesty's court of Exchequer"] at Westminster, in the county of Middlesex, impleaded the defendant in a certain plea of trespass on the case on promises to the damage of the plaintiff of £ , for the not performing the very same identical promises [and undertakings, *if no undertakings be alleged in the declaration, omit these last two words*,] and each and every of them in the said declaration mentioned; and such proceedings were thereupon had in that Court in that plea, that afterwards, to wit, on the day of , A. D. 1833, [*or* in that same Term] the plaintiff, by the consideration and judgment of the said Court, re-

covered in the said plea against the defendant £ for his damages, which he had sustained, as well on occasion of the not performing the same identical promises [and undertakings] in the said declaration mentioned, as for his costs and charges by him about his suit in that behalf expended, whereof the defendant was convicted; as by the record and proceedings thereof, still remaining in the said Court of our said lord the king, before the king himself, [*or if in* C. P., "of the bench aforesaid," *or in the Exchequer*, "of the Exchequer aforesaid,"] at Westminster aforesaid, more fully and at large appears; which said judgment still remains in full force and effect, not in the least reversed, satisfied, or made void. And this the defendant is ready to verify by the said record. Wherefore he prays judgment if the plaintiff ought to have or maintain his said action thereof against him, &c.

Plea of Judgment recovered in Debt, to an Action of Debt.

In the King's Bench, [*or* Common Pleas *or* Exch. of Pleas].
On the day of , A. D. 1833.

D. } And the defendant, by C. D. his attorney, comes
ats. } and defends the wrong and injury, when, &c.,
B. } and says that the said plaintiff ought not to have or maintain his aforesaid action thereof against him, &c.; because, he says, that the plaintiff heretofore, to wit, on the day of , A. D. , [*or* in Term, in the year of the reign of our said lord the king,] in the Court of our said lord the king, before the king himself, [*or if in* C. P., "before (*name of* C. J.,) and his companions, his majesty's justices of the bench," *or if in Exchequer*, "before the barons of his majesty's court of Exchequer,"] at Westminster, in the county of Middlesex, impleaded the defendant in a certain plea of debt, for the detaining and not paying the very same identical debt, and for and in respect of the same identical causes of action in the said declaration mentioned; and such proceedings were thereupon had in that court in that plea, that afterwards, to wit, on the day of last past, [*or* in that same term,] the plaintiff, by the consideration and judgment of the said Court, recovered in the said plea against the defendant the same identical debt of £ , [*the amount stated at the commencement of the declaration*,] in the said declaration mentioned, as also one shilling for his damages by him sustained, as well by the detention thereof, as for his costs and charges by him about his suit in that behalf expended, whereof the defendant was convicted, as by the record and proceedings thereof still

remaining in the said Court of our said lord the king, before the king himself, [*or, if in* C. P., " of the bench aforesaid," *or if in Exchequer*, " of the Exchequer aforesaid,"] at Westminster aforesaid, more fully and at large appears; which said judgment still remains in full force and effect, not in the least reversed, satisfied, or made void, and this the defendant is ready to verify by the said record. Wherefore he prays judgment if the plaintiff ought to have or maintain his said action thereof against him, &c.

If you plead the general issue, with notice of set-off, (as you may do when the general issue is alone pleaded), engross both on plain paper, and deliver them to the plaintiff's attorney or agent. If the amount of the set-off be less than the sum due to the plaintiff, you must pay the remainder into Court. Get the motion-paper for this purpose signed by counsel; take it, together with the signer of the writs' receipt for the money paid in, to the office of the clerk of the rules, and draw up the rule; then annex a copy of the rule to the plea and notice, and deliver them to the plaintiff's attorney or agent. The person who delivers the plea and notice, should previously make a copy of them, that he may be enabled to prove the delivery of the notice at the trial. The following is a form of notice of set-off.

In the King's Bench, [*or* Common Pleas, *or* Exch. of Pleas.]
A. B. plaintiff against C. D. defendant.

Sir,

Take notice, that the above-named defendant, on the trial of this cause, will give in evidence and insist, that the above-named plaintiff, before and at the time of the commencement of this suit, was and still is indebted to the defendant in £ [*here set out the subject-matter of set-off, which for work and labour, &c. may be thus,*] " for the work and labour of the defendant, by him done, performed, and bestowed for the plaintiff, and at his request; and for materials and other necessary things, in and about that work and labour, by the defendant found and provided and used and employed for the plaintiff, and at his like request; and for divers goods and chattels by the defendant [bargained and] sold and delivered to the plaintiff, and at his like request; and for money by the defendant lent and advanced to the plaintiff, and at his like request; and for other money by the defendant paid, laid out and expended for the plaintiff, and at his like request; and for other

money by the plaintiff had and received to and for the use of the defendant; [*if a set-off for interest, see before*] and for money due and owing from the plaintiff to the defendant on an account stated between them; and that the defendant will set-off and allow to the plaintiff, on the trial of the said cause, so much of the said sum of £ so due and owing from the plaintiff to the defendant, against any demand of the plaintiff, to be proved on the said trial, as will be sufficient to satisfy and discharge such demand, according to the form of the statute in such case made and provided. Dated this day of ,1833.

Yours, &c.

D. A. defendant's attorney, [*or* "agent."]

To Mr. P. A. plaintiff's attorney, [*or* "agent."]

If you plead specially, (except any of the above pleas), and the plea concludes with a verification, it must be signed by counsel; otherwise the plaintiff may sign judgment. Engross it on plain paper, and file it with the clerk of the papers, who will make a copy of it for the plaintiff's attorney, if required.

If a double plea be filed, or pleaded before a rule to plead several matters be first drawn up, or at least instructions for it left with the clerk of the rules, it may be treated as a nullity, and the plaintiff may sign judgment.

Engross your double pleas on plain paper, and if any of the pleas require counsel's signature, get the whole signed by counsel. If the defendant wish to plead a double plea, not within the description of those specified in the proviso contained in the rule of T. T. 1 W. 4, take out a summons before a judge, for leave to plead the several pleas, and accompany it with a short abstract or statement of the intended pleas, and deliver a copy on the plaintiff's attorney before nine at night. On the judge's order being made, take it with the abstract or statement of the intended pleas to the clerk of the rules, who will draw up the rule accordingly. As soon as you have obtained the rule, annex a copy of it to the plea, and file them with the clerk of the papers. If the rule should not happen to be ready, when you are obliged to file your plea, you may serve a notice on the plaintiff's attorney, stating that instructions have been given for the rule, and that a copy of it shall be delivered as soon as it shall be drawn up. If the intended pleas be of the description of those named in the proviso of the above rule of T. T. 1 W. 4, then no summons or order will be requisite, and the clerk of the rules will draw up the rule upon your producing the

engrossment of the pleas, or a draft or copy thereof. After obtaining such rule, proceed as in the other cases just pointed out. The plea must be filed with the clerk of the papers, in all cases, even although it consist of pleas, which, if pleaded separately, must have been delivered, &c. But this must be understood of pleas which are pleaded to the same part of the declaration; for if several pleas be pleaded to distinct parts of a declaration, they must be delivered, if separately they must have been delivered, or they must be filed, if separately either of them must have been filed.

Care should be taken that the rule to plead several pleas, be not drawn up before the defendant has appeared.

If the defendant have pleaded or demurred, he cannot afterwards withdraw his plea or demurrer and plead another plea, without the leave of the Court or a judge. The Court, however, will in general give leave to do so, upon the terms of the defendant's taking short notice of trial, and that the plaintiff, if he have a verdict, shall have judgment of the term, or the like, when necessary.

If the defendant be allowed to withdraw his plea, and be ordered to plead *forthwith*, he must plead within twenty-four hours; when ordered to plead *instanter*, he must plead on the same day, or plaintiff may sign judgment.

THE REPLICATION.

There is no time limited for replying, rejoining, &c.; but the parties may do so at any time they think proper, unless they have been ruled to reply, rejoin, &c.

In order to rule the plaintiff to reply, get a rule from the master on the back of the plea; and take it to the clerk of the rules, who will enter it, and will mark on the back of the plea "entered;" pay him 6*d*. Then serve a copy of it on the plaintiff's attorney or agent, on plain paper. The following are the forms of this rule.

Rule to reply or surrejoin, in King's Bench.

In the King's Bench.

B. v. D. } Until is given to the plaintiff to reply [*or* surrejoin, &c.] Entered.

Entry of such Rule.

In the King's Bench.

B. } Until is given to the plaintiff to reply [*or*
v. } surrejoin,] otherwise let a *non pros* be entered.
D. } By the Court.

This rule to reply, &c. may be given at any time when the master's office is opened.

If the rule to reply, rejoin, &c. be not given until after four terms from the time of the last pleading, the party intending to rule the other to reply, rejoin, &c. must give the other a term's notice of his intention to do so, in the following form.

In the King's Bench [*or* Common Pleas, *or* Exch. of Pleas].

B. } Take notice that the defendant [*or* plaintiff] in-
v. } tends to proceed in this cause after the end of the
D. } ensuing term, by giving a rule to reply, [*or* rejoin, &c.] herein.

Dated this day of , 1833.

Yours, &c.

P. A. plaintiff's [*or* D. A. defendant's] attorney *or* agent.

To Mr. P. A.
Plaintiff's [*or* D. A. defendant's]
attorney *or* agent.

The rule to reply, rejoin, &c. expires in four days exclusive after service; Sunday, or any holiday, is reckoned, unless it be the last of the four. If the party be not ready to reply, &c. within this time, he may obtain a further time by summons, &c.

It is to be observed, that no replication or rejoinder, or other pleading after declaration, can be filed or delivered between the 10th of August and the 24th of October, and where the time for pleading a replication or other pleading after declaration does not expire before the 10th of August, the defendant has the same number of days for that purpose after the 24th of October, as if the plea, &c. had been delivered or filed on the 24th of October; but in such case it will not be necessary for plaintiff to give a fresh rule to reply, &c.

If your replication conclude with a verification, engross it on plain paper, get it signed by counsel, and file it with the clerk of the papers. The following is the form.

In the King's Bench [*or* Common Pleas, *or* Exch. of Pleas.]
On the day of , A.D. 1833.

B. } And the plaintiff saith, that he, by reason of any
v. } thing by the defendant in his said plea, ought not
D. } to be barred from having and maintaining his aforesaid action thereof against the defendant; because he saith that there is not any record of the said supposed recovery in the said plea mentioned, remaining in the said Court of our said lord the king before the king himself, [*or, in Common Pleas,* "of the bench," *or, in Exchequer,* "before his Majesty's barons of the Exchequer,"] at Westminster aforesaid, in manner and form as the defendant hath above in his said plea alleged; and this the plaintiff is ready to verify, when, where, and in such manner as the Court here shall order, direct, and appoint. And hereupon the said defendant is commanded that he have the said record before our said lord the king, [*or, in Common Pleas,* "before the justices of the bench here," *or, in Exchequer,* "before the barons of his Majesty's Exchequer here," at Westminster, on , and that he fail not at his peril; the same day is given to the said plaintiff at the same place, [*or, in Common Pleas, or Exchequer, add the word* "here."]

The Court have, in some cases, under special circumstances, allowed the plaintiff to withdraw a replication, and reply *de novo*.

If the plaintiff new assign, instead of replying, the new assignment must be filed with the clerk of the papers; after which, the defendant may be ruled to plead to it, in the same manner as upon the original declaration. The following are the forms:

In the King's Bench.

B. } Rule to plead to new assignment.
v. } P. A. plaintiff's attorney [*or* agent.]
D. } 1833.

B. } Unless the defendant shall plead to the new as-
v. } signment within four days, let judgment be entered
D. } for the plaintiff.

By the Court.

Rejoinder.

If the replication conclude with a verification, the plaintiff may rule the defendant to rejoin. This rule is

obtained from the master, on the back of the replication, and is entered, served, &c. in the same manner as the rule to reply.

You cannot compel a party to take more than one step in the same term; thus, for instance, if the plaintiff reply, the defendant cannot compel him to surrejoin during the same term, nor, of course, sign judgment of *nonpros* for his not doing so.

Judgment for want of.

If the plaintiff do not reply, surrejoin, surrebut, &c. within the time limited for that purpose after service of the rule, or specified in the order for further time, the defendant may sign judgment of *nonpros.* It may be observed, however, that if the defendant's plea or rejoinder be a nullity, the defendant cannot regularly sign such judgment.

So, if the defendant do not rejoin, rebut, &c. it is deemed an abandonment of the plea, and the plaintiff may strike out all the previous pleadings, and sign judgment as for want of a plea.

THE ISSUE

Upon the pleadings and reply, is the next part of the proceedings in the cause. It is usually termed the *issue*, where the general issue has been pleaded, or where the pleadings have been delivered and not filed; or the "*paper-book*," where the pleadings have been filed with the clerk of the papers, and issue joined upon some pleading concluding to the country, or upon *nul tiel record*; or the "*demurrer book*," where either party has demurred.

The following is the form in action commenced by writ of capias, writ of summons, or writ of detainer.

In the King's Bench.

On the day of A.D. , [*day of making up the issue*,] as of Term Wm. IV.

—— (to wit.) A. B. by P. A. his attorney, [*or*, in his own proper person,] complains of C. D., &c. [*as in the declaration, to the end, and then on a new line, thus:*]

And the defendant, by D. A. his attorney, comes and defends, &c. [*copy the pleadings verbatim in the order they come, each party's, if special, in a separate paragraph; and then conclude the issue with the following award of venire.*]

Therefore let a jury thereupon come before our lord the king at Westminster, on the day of , in the year of our Lord , [*some return day before the trial; and, if the trial be at the assizes or sittings after term, the last return day of the preceding term,*] by whom, &c. and who neither, &c. to recognise, &c. because as well, &c. the same day is given to the parties aforesaid, at the same place.

In the Common Pleas.

On the day of , A.D. , [*day of making up the issue,*] as of Term Wm. IV.

—— (to wit.) A. B. by P. A. his attorney [*or* in his own proper person,] complains of C. D. &c. [*as in the declaration, to the end, and then on a new line, thus:*]

And the defendant, by D. A. his attorney, comes and defends, &c. [*copy the pleadings verbatim in the order they come, each party's, if special, in a separate paragraph; and then conclude with the following award of venire.*] Therefore the sheriff is commanded that he cause to come here, on , [*some return day before the trial; and, if the trial be at the assizes or sittings after term, the last return day of the preceding term,*] twelve, &c. by whom, &c. and who neither, &c. to recognise, &c because as well, &c.

Pleas before the barons of the Exchequer at Westminster, on the day of , A.D. , [*day of making up the issue,*] among the pleas of the Term of in the year of the reign of our sovereign lord William the Fourth, by the grace of God, of the United Kingdom of Great Britain and Ireland king, defender of the faith, and in the year of our Lord 1833.

—— (to wit.) A. B. by P. A. his attorney, [*or* in his own proper person,] complains of C. D., &c. [*as in the declaration to the end, and then on a new line thus:*]

And the defendant, by D. A. his attorney, comes and defends, &c. [*copy the pleadings, and if special, let each party's pleading be commenced on a new line; and conclude with the following incipitur of the award of venire, which in the Exchequer is in general all that is requisite until the issue is entered.*] Therefore, &c.

The issue is engrossed on plain paper.

In actions commenced by the process prescribed by the 2 Wm. IV. c. 39, the issue should be intituled of the day

of making it up, *and*, if made up in term, as of that term, or, if made up in vacation, as of the term next preceding the vacation in which it is so made up. And after stating the day and time of making it up as abovementioned, should proceed at once with an entry of the declaration, thus: "Middlesex to wit: A B. by P. A. his attorney, complains of C. D., who has been summoned," &c.

The declaration and pleadings must be correctly copied in the issue, each forming a separate paragraph; and under the special pleas, &c. the clerk of the papers must write the names of the counsel by whom they are signed.

In actions commenced by the process prescribed by the 2 Wm. IV. c. 39, there is no occasion for, and consequently it would be improper to enter, any imparlance or continuance in the issue.

After the pleadings are all copied in their order, the issue concludes with an award of the *venire facias*, as a continuation of the last paragraph.

In some cases, however, it is necessary to enter suggestions, previously to the award of the *venire*. As, when the sheriff is interested in the event of the cause, or related by blood or affinity to either of the parties, a suggestion to this effect may be entered on the issue, and the *venire* is then awarded to the other sheriff, if there be two; or if there be but one, then to the coroner; or if the coroner be also interested, &c. then to two persons appointed by the Court, called elizors.

So, in local actions, where a fair and impartial trial cannot be had in the county where the venue is laid, the Court will, upon motion, grant leave to enter such a suggestion upon the issue, with a *nient dedire*, and an award of the *venire* to the sheriff of the next adjoining county.

Lastly, where one of several plaintiffs or defendants, in a personal action, dies *before* issue joined, a suggestion of his death should be entered in whatever part of the issue it becomes necessary, according to the truth of the fact; as before declaration, between declaration and plea, between plea and replication, &c. But if it happen *after* issue joined, it seems that it need not be suggested until you are making up the judgment roll.

In entering a suggestion on the issue, begin it in a new paragraph; then add, in the same paragraph, the part of the issue immediately following, such as the award of the venire, the plea, or replication, &c.

Rule to return the Paper-book.

When the clerk of the papers makes up the paper-book, he gives, in the margin of it, a rule for judgment, unless the defendant receive the paper-book and return it on a day therein mentioned, in order to be enrolled. The day mentioned in the rule is regulated thus:—If the issue is to be tried at the assizes, the defendant must return the paper-book, within four days exclusive after the delivery of it, whether it have been delivered in term or vacation; otherwise the plaintiff may sign judgment.

But where the issue is to be tried in London or Middlesex—if the paper-book be made up and delivered in term time, or within four days exclusive after it, it must be returned within four days exclusive after the delivery of it, otherwise judgment may be signed: or, if a plea be not put in in time, so that the paper-book may be made up and delivered within the time abovementioned, then if the paper-book be made up and delivered within eight days exclusive after the term, the defendant must return it within four days exclusive after delivery, otherwise judgment may be signed. But if a plea be pleaded, time enough to allow of the paper-book being made up and delivered within the four days after term, and the paper-book be not delivered until after that time, in such a case the defendant is not bound to return it until within the first four days of the next term. The rule to return the book cannot be drawn up for a shorter time than four days, and this, although the defendant is under terms to take short notice of trial.

The following is the form of the rule to return the paper-book:—

Unless the defendant receive this paper-book, and return the same, on the day of , to be enrolled, let a writ be made, [*if the judgment would be interlocutory, or if final,* "let a rule be entered."]

If the book be not returned in the evening of the fourth day, the plaintiff may refuse it when tendered the next morning, and may sign judgment. But if the plaintiff accept the book without objection, he cannot afterwards sign judgment.

On the back of the issue or paper-book, write the notice of trial, as directed hereafter.

When the defendant's pleading concludes to the coun-

try, or when he demurs or pleads *nul tiel record*, the plaintiff's attorney may immediately have the issue or paper-book made up, adding the *similiter*, joinder in demurrer, or the common replication to *nul tiel record*. Also, where the plaintiff's pleading concludes to the country, or where he demurs, &c. so that the defendant is not allowed afterwards to allege any new matter, the plaintiff's attorney may have the issue or paper-book made up (adding the *similiter*, &c. for the defendant) without ruling the defendant to rejoin, &c.

There is no time, however, limited for making up the issue or paper-book. But if either party have demurred, or pleaded a plea, &c. concluding to the country, and the plaintiff will not make up the issue or paper-book, the defendant may make it up, and deliver it to the plaintiff's attorney, in order that he may carry down the record to trial by proviso; or he may rule the plaintiff to reply, and, if he fail to do so, sign judgment of *nonpros*. Or, if neither party have as yet demurred or pleaded to the country, then the defendant, if he wish to force the plaintiff to proceed, should rule him to reply, surrejoin, and sign judgment of *nonpros*. if such a rule be not complied with.

In proceedings against prisoners, the plaintiff is bound to proceed to trial within a certain time.

The issue or paper-book is usually made up by the plaintiff: but it may be made by the defendant, in order to have a trial by proviso, as abovementioned: and in replevin, prohibition, and *quare impedit*, either plaintiff or defendant may make it up, and try the cause without proviso, both parties in these cases being deemed actors

In all cases where the general issue has been pleaded, or where the pleadings must be delivered to the attorneys, and not filed, the issue is made up by the attorney. But in all cases where the pleadings have been filed with the clerk of the papers, he makes up the paper-book, or demurrer-book, upon being furnished with a copy of the declaration. Pay him 8*d*. per folio for the whole book, and 4*d*. per folio, in addition, for all the pleadings subsequent to the declaration. Deliver this issue or paper-book to the opposite attorney, having first taken a copy thereof.

The issue or paper-book must be delivered to the defendant's attorney or agent in town, at least the number of days previous to the sittings or assizes at which it is intended to try the cause, which it is necessary to give as

notice of trial. Where several defendants appear by several attorneys, a copy of the issue or paper-book should be delivered to each of them.

If there be any variance between the issue or paper-book, and the declaration, &c. or any other irregularity in making it up, the defendant's attorney should, instead of accepting the issue or returning the paper-book, obtain a judge's order for setting it right.

The issue remains with the attorney; but the paper-book must be returned to the attorney who delivered it, within the time limited for that purpose, otherwise the plaintiff may refuse to receive it if afterwards tendered, and may sign judgment as for want of a plea on the following morning. If, however, he receive it without objection, he cannot afterwards sign judgment.

When the issue is accepted, or the paper-book returned, the plaintiff should, in strictness, enter it upon the issue-roll, the same term the issue is joined. Yet this is seldom done until after the trial, and immediately before it becomes necessary to carry in the roll, when the issue is entered on the roll verbatim, together with all the proceedings subsequent to the award of the *venire*, to the judgment inclusive; and the roll is then termed the "judgment roll." An *incipitur*, as follows, however, must be entered on the roll, at the time of passing the record of *nisi prius;* otherwise the record cannot be passed or sealed at the *nisi prius* office.

Incipitur of the Issue on the Roll, in King's Bench.

On the day of , A. D. [*day of making up the issue,*] as yet of term, in the [third] year of the reign of King William the Fourth. Witness, [Sir Thomas Denman, knight] [*name of chief justice*].

—— to wit. A. B. puts in his place P. A. his attorney, against C. D. in a plea of trespass on the case upon promises, [*or* "of debt," *&c. as the action is.*]

—— to wit. C. D. puts in his place D. A. his attorney, at the suit of the said A. B. in the plea aforesaid. [*Or, if the defendant appear in person, or a common appearance be entered for him by the plaintiff, then say,* "—— to wit: The said C. D. in person, at the suit of the said A. B. in the plea aforesaid."]

—— to wit. A. B. by P. A. his attorney, complains of C. D. who has been summoned (*as in the declaration*) to answer the said A. B. of a plea of trespass on the case

upon promises. [*Let this be according to the commencement of the declaration.*] For that, &c.

The defendant, however, may at any time oblige the plaintiff to enter the issue. But in country causes, the plaintiff cannot, in any case, be obliged to enter the issue the same term it is joined; nor, in actions in London or Middlesex, unless notice of trial have been given. In order to oblige the plaintiff to enter the issue, get a rule from the master on the back of it, giving a certain day to the plaintiff to enter it. Enter this with the clerk of the rules; pay him 3*s*. and serve the plaintiff's attorney with a copy of it, in the following terms:

B. *v.* D. } the day of is given to the plaintiff to enter the issue.

Entered.

Which is entered thus:

B. *v.* D. } the day of is given to the plaintiff to enter the issue, otherwise let a *nonpros* be entered.

By the Court.

The plaintiff must then enter the issue, and have the roll carried in, in country causes before the continuance-day of term; in actions in London and Middlesex, within four days after notice of the rule; otherwise the defendant will sign judgment of *nonpros*, with costs; which four days are to be reckoned exclusive of the day on which the copy of the rule is served; and Sunday, or holiday, is reckoned, unless it be the last of the four. But if the roll be brought in at any time before judgment is actually signed, it will be sufficient.

The plaintiff in general enters the *issue*. But in replevin, prohibition, and *quare impedit*, either the defendant or plaintiff may make up and enter the issue, both being deemed actors.

In order to enter the issue, get a roll of the term of which the issue is entitled, from the person appointed to deliver out the rolls of the Court (at present, Mr. Adams, stationer, of Lincoln's Inn); or it may be had at any other stationer's. Ingross the issue on this roll, beginning about two inches below the stamp, and leaving a margin of an inch at least, and a space at bottom to prevent the writing being rubbed out; writing upon both sides if necessary.

When the issue is thus entered on the roll, get a number for it, from the clerk of the judgments, if the issue be of the same term,— or from the clerk of the treasury, if of any other term: pay him 4*s.* 8*d.* Make out a docket-paper, and take it and your roll to the clerk of the judgments, who will mark the roll and enter the docket: pay him 3*s.* Then take the roll to the clerk of the treasury, who will file the same in the treasury of the Court.

The following are examples of docket papers:

Docket Papers, in King's Bench or Exchequer.

The entry, (*or*, further entry) of P. A. gentleman, one, &c. of the term of , 3 Wm. IV. 1833.

(*Venue.*)	Issue joined in *case*, between A. B. plaintiff, and C. D. defendant, on a plea of *non assumpsit*, [*or, as the plea is.*]	*Roll.*
(*Venue.*)	Issue joined in *debt*, between A. B. plaintiff, and C. D. defendant, on a plea of *nil debet* (*or, non est factum.*)	— —
(*Venue.*)	Issue joined in *trespass*, between A. B. plaintiff, and C. D. defendant, on a plea of not guilty, [*or, as the case may be.*]	— —
(*Venue.*)	Issue of *nul tiel record* in *case*, (*or*, debt,) between A. B. plaintiff, and C. D. defendant.	— —
(*Venue.*)	Entry of demurrer book, in a plea of trespass on the case, between A. B. plaintiff, and C. D. defendant.	— —

Entries on Docket Roll in Common Pleas.

Non assumpsit, (*or*, did not promise,) in *case*.

(*Venue.*)	A. B. ....plaintiff, C. D. ....defendant.	*Roll.*

Nil debet, (*or*, doth not owe,) in *debt*.

(*Venue.*)	A. B. ....plaintiff, C. D. ....defendant.	— —

Non est factum, in *debt*. (*or* covenant.)

(*Venue.*)	A. B. ....plaintiff, C. D. ....defendant.	— —

Nul tiel record, (*or*, no such record,) in *case*, (*or*, debt.)

(*Venue.*)	A. B......................plaintiff, C. D......................defendant.	*Roll.*

Not guilty, in *trespass* (*or* case.)

(*Venue.*)	A. B......................plaintiff, C. D......................defendant.	——

Special issue, in *case*, (*or* debt, &c.)

(*Venue.*)	A. B......................plaintiff, C. D......................defendant.	——

NOTICE OF TRIAL.

When the trial is to be had in Middlesex, and the defendant lives within forty miles of London, there must be eight days' notice of trial. Where there are several defendants, if any one reside within forty miles of London, eight days' notice will be sufficient: but if all the defendants reside above forty miles from London, fourteen days' notice must be given. And if the defendant reside within forty miles of London, at the commencement of the action, but before notice of trial make his residence beyond that distance, he will be entitled to fourteen days' notice, if he have apprised the plaintiff of his removal. Sunday is reckoned as one of the days, unless it be the day on which the notice is given.

When the trial is to be had in London, and notice is given for the sittings in term, or for the first day of the sittings after term, it must be an eight or fourteen days' notice, as in Middlesex. But if the notice be given for the *adjournment day*, it will be sufficient to give such notice eight days before the first day of the sittings after term, if the defendant reside above forty miles from London; and four days before the said first day, if the defendant reside within that distance. When the trial is to be had at the assizes, ten days' notice of trial before the commission day must be given. The days are exclusive of the day of service, and inclusive of the last day. Sunday, Christmas-day, Good Friday, or a day appointed for a public fast or thanksgiving, is reckoned as one of the days, unless it be the last day.

If the defendant be under terms to take "short notice" of trial, this means, in country causes, a notice of four days at least, before the commission day; one day exclusive, the

other inclusive; in town causes two days' notice is sufficient, although it is usual to give as much more as the time will admit. But if the terms be, to take short notice of trial "for the sittings after term," the plaintiff is not thereby obliged to take short notice of trial for the *adjourned* sittings after term. So, if the terms be to take short notice of trial *in* term, the defendant is not thereby bound to take short notice of trial for the sittings *after* term.

Notice of trial must be given in all cases, except where a cause is made a remanet from one sittings to another, or put off by order of *nisi prius;* and in all cases of peremptory undertakings to try, a fresh notice of trial must be given, although the cause remains in the paper. If no notice be given, when necessary, and the plaintiff proceed and obtain a verdict, the Court will set it aside.

The plaintiff is not *bound* by the practice of Court to give notice of trial, until the term after that in or of which issue is joined. But after that time, if the plaintiff neglect to give notice, the defendant may proceed to a trial by proviso, or to obtain judgment as in a case of nonsuit.

Where the plaintiff, in pleading, concludes to the country, he may give notice of trial at the time of delivering his replication, or other subsequent pleading; and if issue be afterwards joined, the notice is available; but if issue be not joined, and the plaintiff sign judgment, and forthwith give notice of executing a writ of inquiry, such notice will operate from the time that notice of trial was given as abovementioned. All notices must be given before nine at night.

If the defendant have appeared in person, the notice must be given to him; if by attorney, it must be given to such attorney, if his residence be known; if not known, to the defendant; and if given to the attorney, he is bound to acquaint his client in due time. In country causes, notice must be given to the agent in town, and not to the attorney in the country; but notice on an old issue may be given either to the attorney or agent.

The notice of trial must be in writing. It is usually written on the back of the issue; but may be on a separate paper, and is so where given on delivering the replication or other subsequent pleading, which concludes to the country; it is also given separate in all notices of trial by continuance, new notices, &c. The forms are as follow:—

Notice in London.

In the King's Bench [*or* Common Pleas, *or* Exch. of Pleas.]
Between A. B. plaintiff, and C. D. defendant.

Take notice of trial in this cause, for the sittings within [*or*, for the first day of the sittings after, *or* for the adjournment day of the sittings after, *as the case is*,] this present Term, to be holden at the Guildhall of the city of London.

Dated this day of , 1833.

Yours, &c.
P. A.
plaintiff's attorney [*or* agent.]

To Mr. D. A.
defendant's attorney [*or* agent.]

The like, in Middlesex.

[*Same as in the preceding form, but say*,] "for the sittings within [*or*, for the sittings after] this present Term, to be holden at Westminster-hall, in the county of Middlesex."

The like, at the Assizes.

[*Same as in the preceding form, but say*,] "for the next assizes, to be holden at in and for the county of "

If the notice be given on the issue or paper-book, it need not be intitled, nor be so particular as when on a separate paper. A notice of trial for the sittings after term at the Guildhall, London, must specify whether the trial is to be had at the first day of the sittings, or on the adjournment day.

If there be two or more defendants, and one of them lets judgment go by default, and the other pleads, the notice of trial should state, that the issue joined with the latter will be tried, and that the jury will at the same time assess the damages against the former.

Notice of Trial by continuance, &c.

When notice of trial in London or Middlesex has been given, and the plaintiff is not ready to proceed, then, instead of countermanding his notice, he may continue it to the next sitting, by a notice of trial by continuance in the following terms:—

In the King's Bench, [or Common Pleas, or Exch. of Pleas.]
Between A. B. plaintiff, and C. D. defendant.

Take notice, that I do hereby continue the notice of trial given you in this cause, to the next sittings [or, sittings after] this present term.

Dated this day of , 1833.

Yours, &c.
P. A.
plaintiff's attorney [or agent.]

To Mr. D. A.
defendant's attorney [or agent.]

This notice must be served two days prior to the sittings at which the cause was to have been tried, the one day inclusive, the other exclusive, as Monday for Wednesday, and can be given only once in a term.

A notice by continuance is never adopted where there is time to countermand a former notice, and give a new one, and consequently never used in country causes.

Where no proceedings have been had within four terms exclusive after issue joined, a term's notice must be given of the plaintiff's intention to proceed in the action, before he can give notice of trial; but this rule, as to a term's notice, does not extend to a notice of trial by proviso.

Notice of Countermand.

The plaintiff has a liberty of countermanding his notice of trial, even in a case of a trial at bar. The notice for this purpose must be in writing; it may be directed to and served upon the attorney in the country, or the agent in town, at the plaintiff's option, unless otherwise ordered by the Court or a judge.

In town causes, where the defendant lives within forty miles of London, two days' notice of countermand is sufficient. In country causes, or where the defendant resides more than forty miles from London, notice of countermand must be given six days before the time mentioned in the notice for trial, unless short notice for trial has been given. The days, in all these cases, are reckoned, the one inclusive, the other exclusive.

If the plaintiff do not countermand his notice in time, and do not proceed to trial according to his notice, the defendant is entitled to his costs of the day; and may move for judgment, as in case of a nonsuit.

In the case of notice by continuance, or of notice for the next sittings after a *ne recipiatur*, if the plaintiff do not proceed to try the cause at the sittings for which he has so given notice; and in all other cases, if the plaintiff do not proceed to trial at the time for which he originally gave notice, he must afterwards give a new notice, the same as the original one, before he can carry down the cause for trial; and this even where the trial is put off to the next sittings or assizes, by rule of Court, or although the plaintiff has given a peremptory undertaking to try, except where a cause is made a *remanet* from one sittings to another, or is put off by order of *nisi prius*. The form of a new notice is the same as other notices of trial.

EVIDENCE.

After notice of trial, we arrive at the consideration of what sort of evidence may be had recourse to, in support of the cause. Which may be arranged in the following four divisions, *viz.*

I. Records.—The expense of a witness called only to prove the copy of any judgment, writ, or other public document, will not be allowed in costs, unless the party calling him, within a reasonable time before the trial, have required the adverse party by notice in writing and production of such copy, and unless such adverse party has refused or neglected to make such admission.

The notice may be given in this form :—

In the King's Bench [*or* Common Pleas, *or* Exch. of Pleas].

Between A. B. plaintiff, and C. D. defendant.

In pursuance of the rule of Court in that case made, I do hereby require you to agree to admit, and that you do admit, in evidence, on the trial of this cause, the paper writing [*or*, "in print,"] hereunto annexed, and marked A., and now produced to you, as and to be a true and sufficient copy of the judgment obtained by A. B. against C. D. in Term, A.D. 1833 [*or* "of a writ," &c. *or other public document, according to the fact,*] and to agree to admit, and do admit, that the same shall and may be read in evidence on such trial, without further proof that the same is a true [and sufficient] copy of the said original document, and I request you to write and subscribe

such your agreement and admission, and to make such admission; and in default thereof, I shall be under the necessity of incurring the expense of subpœnaing and producing on the said trial a witness to prove such copy.

Dated this day of , 1833.

P. A. plaintiff's [*or* defendant's] attorney *or* agent.

To Mr. D. A. defendant's [*or* plaintiff's] attorney *or* agent.

Public acts of parliament are proved (whenever requisite) by the copies printed by the king's printer. But *copies* printed by the king's printer are not evidence of a *private act* of parliament. When therefore it becomes necessary to prove a private statute, bespeak a copy of it at the Parliament Office, in time before the trial; and when ready, call there and examine it with the clerk. Afterwards, upon producing it in evidence, you will be required to swear that you examined the copy, whilst the clerk read the original from the roll, and that it is correct. A private act containing a clause "that it shall be deemed and taken to be a public act, and shall be judicially taken notice of without being specially pleaded," requires to be proved in the usual manner by an examined copy.

And *records* are not complete until delivered into Court on parchment; and when they form the gist of the action, and issue is joined upon *nul tiel record*, the record itself must be brought into Court, if it be a record of this Court, in order that it may be inspected; but if it be a record of another Court, the tenor of it is returned into this Court upon *certiorari*.

But when matter of record comes in question merely *collaterally*, as where it is stated in the pleadings as inducement, and must be proved, an examined copy of the record will be sufficient evidence. For this purpose bespeak a copy of the record from the clerk of the treasury, and examine it with him in the same manner as is above directed with respect to private statutes. The roll, of course, must have been previously carried in. The judgment-paper signed by the master, is not evidence.

An office copy in the same Court and in the same cause, is equivalent to a record, but in another Court or in another cause, the copy must be proved. Where a copy is made by a person trusted for that purpose, it is

admissible in evidence, without proof of its having been actually examined.

In order to prove a verdict, you must give in evidence an examined copy of the whole record, including the judgment; for it would not otherwise appear but that judgment had been arrested, or a new trial granted. To prove the issuing of a writ, if the writ be the gist of the action, you must get it returned, and then obtain an examined copy of it from the *custos brevium*. But if it be matter of inducement merely, it need not be returned; and, as it is not a record until returned, it is not necessary in such a case to prove it by an examined copy; but the writ itself, if in your possession, may be given in evidence, or if in the possession of the other party, then, upon proving the service of a notice upon him to produce it, and that it has not been returned and filed with the *custos brevium*, but was in the other party's possession after the day on which it was returnable, you will be allowed to give a copy of it in evidence. A copy of the judgment roll, containing an award of an *elegit* and the return of the inquisition, is evidence of the *elegit* and inquisition in an action for use and occupation.

A judgment of the House of Lords is proved by an examined copy of it from the minute-book; which may be had upon application at the office of the clerk in parliament.

Convictions before justices of peace are proved by examined copies, which the clerk of the peace of the proper county will make out for you upon application for that purpose, and you may examine them.

The records of indictments are also proved by examined copies, which may be obtained of the clerk of the peace, if the indictments were found at the sessions; or from the clerk of arraigns, if the indictment were found or the trial had at the assizes; or you may serve a *subpœna duces tecum* on the officer in whose custody the indictment is, and he will produce it at the trial. In actions for malicious prosecutions, however, before the record of an indictment for felony can be given in evidence, or before the officer will be authorised in giving you a copy, you must obtain an order for that purpose from the Court at the Old Bailey, if the bill were preferred or the trial had there, or from the Attorney-General, if the bill were preferred or the trial had in any other court. The minute-book of the clerk of the peace is not evidence to prove that an indictment was preferred. And a minute-book, from which

an entry of the proceedings at sessions is made, and from which book the roll containing the record of such proceedings is subsequently made up, is not a record.

To prove the passing of a fine, the chirograph is conclusive evidence, without further proof; but if it be necessary to prove the proclamations, you must obtain an examined copy of the record.

A common recovery is proved in the same manner as an ordinary judgment; but you must also prove the seisin of the tenant to the *præcipe*, unless the recovery be ancient.

To prove a deed which has been *enrolled*, the endorsement of the enrolment upon the deed is evidence sufficient, without further proof of the deed. But if the deed be lost, it can be proved only by an examined copy of the enrolment; but this must be understood of deeds only which need enrolment. In proving an examined copy of a record, it is merely requisite to prove that you examined the copy whilst the officer read the record.

Letters patent may be given in evidence, without further proof; or they may be proved by exemplification under the great seal.

By the statute 9 Geo. IV. c. 15, every Court of record holding plea in civil actions, and any judge sitting at *Nisi Prius*, if they think fit, may cause the record, when a variance appears between any matter in writing or in print produced in evidence, and the recital or setting forth thereof upon the record, to be forthwith amended in such particular by some officer of the Court, on payment of such costs (if any) to the other party, as such judge or Court shall think reasonable; and thereupon the trial shall proceed as if no such variance had appeared; and in case such trial shall be had at *Nisi Prius*, the order for the amendment is indorsed on the *postea*, and returned together with the record; and thereupon the papers, rolls, and other records of the Court from which such record issued, shall be amended accordingly.

Entries in the journals of the *House of Lords and House of Commons*, are proved by examined copies from their minute books; and *in courts of equity*, the bill and answer must be proved by the production of them, or by examined copies, which copies you may obtain from the six clerks' office, upon application for that purpose. In order to prove the answer, you are obliged to produce the bill or give in evidence an examined copy of the bill as well as of the answer; but where it was proved by the proper officer that he had searched diligently in the office for the bill,

and could not find it, the Court allowed the answer to be read without it. But if the answer be adduced in evidence merely as an admission of the party on oath, it may be sufficiently proved by an examined copy, without proof of a decree or of the party's handwriting. The entire answer must be copied, however irrelevant some parts of it may be; for if you give any part of an answer in evidence, the opposite party has a right to have the entire of it read. If the copy of the answer be given in evidence against the party who was defendant in the suit in equity, the Court will also in general require some evidence of identity. Proof of the party's handwriting to it will suffice to prove it.

Depositions in equity, when evidence in this Court, must be proved here by examined copies also; and to render them evidence, you must first give in evidence an examined copy of the bill and answer, and then prove that the deponent is dead, or out of the jurisdiction of the Court, or that he has been diligently sought for and could not be found, or that he has been subpœnaed but fell sick by the way, or the like. But the bill and answer need not be proved, if the depositions be offered in evidence, as an admission merely, or for the purpose of contradicting a witness.

A decree in equity, if it remain in paper, may be proved by an examined copy, together with an examined copy of the bill and answer; but if it have been enrolled, it must be proved by an exemplification under the great seal, which requires only to be produced in evidence without further proof.

Where a will remains in Chancery, by order of that Court, it may be proved by an examined copy.

Proceedings in Courts of Law, not being Records.

If you intend to give in evidence the examination of a witness on a former trial, you must first give in evidence either the *postea*, or an examined copy of the record; next you must prove the death of the witness, and then give parol evidence of his examination, but proof of death is not in all cases necessary.

Rules are proved by office copies; or the clerk of the rules, on *subpœna*, will attend and prove the rules, for which you pay him one guinea. A rule of Court is not matter of record.

A judge's order may be proved by the production of the order itself, or by an office copy of the rule by which it has been made a rule of Court.

Affidavits, made use of in Court, and filed with the clerk, may be proved by office copies; but if filed with any other officer, they must be proved by examined copies, or produced. Affidavits, not filed, can be proved only by production of the affidavits themselves, and by parol evidence of their having been sworn.

Proceedings before the Commissioners of Bankrupt.

Certain proceedings on fiats of bankruptcy must be entered of record, before they can be produced in evidence; all other proceedings in bankruptcy the lord chancellor may, upon petition, order to be entered of record. And office copies are good evidence of every original instrument or writing filed in the office or in the possession of the lord chancellor's secretary of bankrupts.

By 7 Geo. IV. c. 57, s. 71, office copies of proceedings in the insolvent court are made evidence.

On proceedings in the ecclesiastical Courts, the libel, answer, and depositions, are proved by examined copies.

A copy of the probate of a will, under the seal of the ecclesiastical Court, is sufficient evidence to prove a will of personal property, or that J. S. is executor, or the like, and the seal of the Court authenticates it, without further proof.

Administration is proved by a certificate from the ecclesiastical Court that administration was granted; or you may get a clerk from the ecclesiastical Court to attend with the book in which the order for granting administration was entered; or you may prove it by an examined copy of the registry.

On proceedings in the Court of Admiralty, the libel, answer, depositions, and sentence in the Admiralty Court, are proved by examined copies.

On proceedings in inferior courts not of record, judgments may be proved by producing the books in which they are entered, or by examined copies; but in proving the judgment of an inferior court, evidence should also be given of the proceedings previous to the judgment.

If the rolls of a court baron be intended to be given in evidence, you may get the steward or his deputy to produce them at the trial, or they may be proved by an examined copy, but judgments of a court baron, or other inferior court not of record, can be proved only by the production of the book in which they are entered. A surrender and presentment may be proved by a draft of an entry produced from the muniments of the manor, and

the parol testimony of the foreman of the homage jury who made such presentment.

The *rolls of a manor* are open to the inspection of the lord and the copyholders, but not of strangers; and if inspection be refused, the Court, upon application, will rule the steward or person in whose possession the rolls are, to grant it. The rule will be absolute in the first instance.

An *award* is proved in the same manner as a deed or other written instrument. You may also prove the submission.

The proceedings of *courts of justice in foreign countries* are proved by copies under the respective seals of such Courts; but it is necessary also to prove by parol evidence that the seal affixed thereto is the seal of the Court. If, however, it be proved that the Court has not a seal, then proof by an exemplification under the hand of the chief justice of the Court (his hand-writing being proved) will be received; but the certificate of a British consul abroad is not admissible evidence in this country. Records of the Courts in Ireland may be proved by examined copies, in the same manner as the records in this country. The law of a foreign country, if written, can be proved here only by the production of some authenticated copy: if unwritten, then by the parol evidence of a witness of competent skill.

When books, &c. in the herald's office are to be given in evidence, upon application to the office, and leaving there a notice, a clerk will attend and produce them at the trial.

Old *terriers*, *surveys*, and *maps* of *manors*, &c. when evidence, must be produced at the trial, and such circumstances connected with them stated in evidence as may induce the Court and jury to give credit to them.

Public surveys and *inquisitions*, when evidence, should be produced at the trial; but when an inquisition has been returned and filed, an examined copy may be given in evidence.

Domesday-book, as evidence of lands being ancient demesne, must be produced at the trial, by the officer of the Exchequer in whose custody it is, and be inspected by the judges. But if the question come incidentally before the Court, an examined copy of that part of the book relating to it will be sufficient.

A customary of a manor, when evidence, must be produced, and some evidence given to induce the Court to believe that it has been handed down from steward to steward with the rolls.

An *entry* in a *parish register*, of a *marriage, christening*, or *burial*, may be proved either by the production of the register itself, or by giving in evidence an examined copy of the entry. You should also be prepared to prove the identity of the parties married, &c. but to prove the hand-writing of the parties in the register it is not necessary to call the subscribing witness.

Entries in *corporation books*, and the books of *public companies*, relating to things public and general, may be proved by examined copies; but if they do not relate to corporate acts, the original must be produced, and instruments of a private nature must be produced at the trial. If the books be ancient, it must be shewn that they come from the proper custody, as from the chest which has always been in the custody of the clerk of the corporation; it is not sufficient that they are brought from a chest found in the house of a former clerk after his death. A party, interested in such entries, has a right to inspect them and have copies of them; and if this be refused, the Court will order that he shall be at liberty to inspect them and have copies, on application by affidavit.

A *bull* or *licence* of the pope, when intended to be given in evidence, must be produced at the trial; or perhaps an exemplification of a bull under the bishop's seal, would be sufficient.

The *king's certificate* under his sign manual; the gazette, proclamations, and the articles of war, printed by the king's printer; the almanack; a general history, &c.: are all, when evidence, to be produced at the trial.

The expense of a witness called to prove the hand-writing to, or the execution of any written instrument *stated upon the pleadings*, will not be allowed, unless the adverse party has, upon summons before a judge, a reasonable time before the trial, (such summons stating therein the name, description, and place of abode of the intended witness), neglected or refused to admit such hand-writing or execution, or unless the judge, upon attendance before him, indorses upon such summons that he does not think it reasonable to require such admission. The following is the form of such notice:—

v.
D.
} Let the [defendant's] attorney or agent attend me at my chambers, in Serjeant's Inn, Chancery Lane, to-morrow, [*or*, on the] at of the clock in the noon, to show cause why the [defendant] shall not, on the trial of this cause, admit that he duly executed the writing obligatory, [*or*, "indenture,"

or "articles of agreement," *or* "that he duly signed the bill of exchange," *or* "promissory note," *or* "agreement,"] stated in the pleadings in this cause, as the obligor, [*or* "as the drawer," "acceptor," "maker," *or* "indorser thereof," *or* "as a party thereto," *according to the facts.*] The intended witness to prove that the said [defendant] did duly execute [*or* "sign,"] the said document is W. W. of , in the county of , [tailor].

Dated this day of , 183

[*Judge's or baron's signature.*]

When a *deed* is to be given in evidence, the general rule is that the deed itself must be produced at the trial; but where a deed has been lost, burnt, or otherwise destroyed, the contents of it may be proved by a copy, or other secondary evidence; or where it is in the hands of the opposite party, and he has been served with a notice to produce it, if, after the proof of the service of that notice, he refuses to produce it, the contents of it may then be proved by secondary evidence; so, if it be in the hands of a third person, who refuses to produce it at the trial, after being served with a *subpœna duces tecum* for that purpose, after proof of that circumstance, of its having been in his hands on the service of the *subpœna* or afterwards, secondary evidence of its contents will be admitted. This however does not, it seems, dispense with the necessity of proving the due execution of the deed itself, either by a subscribing witness, or by some other evidence, care being taken that such evidence be the best which can possibly be procured, under the peculiar circumstances of the case. And if the contents of the deed be proved by a copy, parol evidence of the correctness of the copy must be given by some person who had compared it with the original. It must also appear that the deed was properly stamped.

On the proof of the execution of the deed, if there have been no subscribing witness to it, then proof of the handwriting of the parties will be sufficient; the law in such a case presuming a delivery. But if the deed were attested, the execution must be proved by at least one of the subscribing witnesses, unless when the fact of execution is one of the admissions in the cause; for even the acknowledgment of the party, or his admission in an answer to a bill of discovery, are in this case deemed merely secondary evidence, and not sufficient. Payment of money into Court, however, is considered such an admission of the execution of a deed, as dispenses with the necessity

of calling the subscribing witness. It is not necessary that the subscribing witness should swear that the deed was actually *executed* in his presence; if he were afterwards desired to attest it by the party who executed it, or in the presence of the party, and he attest it accordingly, this will be sufficient, provided the attestation and execution be done so nearly at the same time as fairly to be deemed parts of the same transaction. On the other hand, a person who even sees an instrument executed, but who is not desired by the parties to attest it, cannot, by afterwards putting his name to it, prove it as an attesting witness. In proving the execution of a deed, the attesting witness frequently states that he does not recollect the fact of the deed being executed in his presence; but that, seeing his own signature to it, he has no doubt that he saw it executed, and this has been always received as sufficient proof of the execution.

To this rule of proving the execution by the evidence of an attesting witness, or otherwise, there are many exceptions. *First*, where money has been paid into Court, as above mentioned, it dispenses with the necessity of proving the deed upon which the action is founded; and the same when the execution is one of the admissions in the cause. *Secondly*, where the deed is thirty years old or upwards, the Court will presume that it has been duly executed, and will not require it to be proved; provided possession have followed the deed, or that some satisfactory account be given of it, and provided there be no rasure or interlineation in it, and that it do not import fraud; otherwise it must be proved, as in ordinary cases, either by the attesting witness, or by evidence of his and the party's hand-writing. It may be necessary here to remark, that when you give an ancient obligation for the payment of money in evidence, you should be prepared to prove a payment of principal or interest within the last twenty years, or other circumstance sufficient to rebut the presumption the law will otherwise raise, of such obligation having been satisfied. *Thirdly*, where a deed enrolled (and to which enrolment was necessary) is given in evidence, it is not necessary to prove the execution of it by the subscribing witness; but it may be proved by the enrolment endorsed on it, or, if the deed be lost, by an examined copy of the enrolment, as already mentioned. *Fourthly*, where one deed is recited in another, proof of the second deed is deemed proof of the one recited, as between the parties to the second deed, and those claiming

under them. *Fifthly*, if the name of a fictitious person be put as the only subscribing witness, evidence of the hand-writing of the party alone will be sufficient. So, if the subscribing witness be since dead, or have become insane, or blind, or be abroad, out of reach of the process of the Court, whether domiciled there or not; or if he have set out for the purpose of leaving the kingdom; or if, from circumstances, it may fairly be presumed that he has left the kingdom; or if it appear that he is serving in the navy, or the like; or if, after a *bona fide*, serious, and diligent inquiry, he cannot be found; or if he be interested in the event of the suit, or become subsequently incompetent as a witness; then, upon proof of any one of these circumstances, you may give secondary evidence of the execution of the deed, by proving the hand-writing of the witness and party. It is not a sufficient ground for admitting evidence of the witness's hand-writing, that he is ill, even without hope of recovery. But if there be two witnesses, the deed may be proved by either. Deeds executed in the East Indies, and the witnesses residing there, may be given in evidence in Great Britain,' upon proof of the hand-writing of the parties and witnesses. *Sixthly*, if the deed appear to be attested by one or more persons, who never saw the deed executed or delivered, the attestation may be deemed a nullity, and the deed proved by proving the hand-writing of the party. *Seventhly*, where a party producing a deed under a notice to produce, claims a beneficial interest under it, the party calling for the deed need not prove the execution of it. But this *rule* does not apply, except where the party has had it so long in his possession (as nine months) that he might have been prepared to prove the execution. *Eighthly*, where the defendant in possession of a deed has had notice to produce it, but does not; then, on proof of the service of such notice and possession of the deed, the plaintiff need not prove his execution of it. *Ninthly*, if the deed be lost, and it is not proved that plaintiff knew of the names of the subscribing witnesses, he may recover without subpœnaing them.

To prove a will of lands, it is only necessary to call one of the witnesses who attested it; if the opposite party wish, he may call the other two. The witness called, however, should be prepared to give parol evidence of every circumstance attending the attestation, necessary to shew that the will was duly executed and attested according to the directions of the statute. A will of personal property only, is proved by a copy of the probate.

The *hand-writing* of a witness or party may be proved

by some person who has a knowledge of it, from having seen him either write, or from having been in the habit of corresponding with him; or the hand-writing of a party may be proved by his own acknowledgment or admission.

Care must be taken that the deed be properly stamped.

Writings not under seal are proved by the subscribing witness, if there be one; or if not, by proof of the party's hand-writing. A warrant to distrain, or notice to quit, if attested, must be proved by the attesting witness.

In an action by a payee against the acceptor of a bill of exchange, or the maker of a promissory note, you must produce the note or bill, and prove the hand-writing of the defendant. But, if the action be brought by an *indorsee*, he must also prove the hand-writing of the first indorser, and of the intermediate indorsers, if they be mentioned in the declaration.

In an action by indorsee against an indorser of a bill of exchange or promissory note, or drawer of a bill of exchange, produce the bill or note, and prove the defendant's hand-writing; and also a presentment for payment and refusal, and that the defendant had due notice thereof. In a foreign bill of exchange, the non-payment is proved by the mere production of the protest. The notice must be proved by the person who either left it, or put the letter containing it into the post-office.

In an action by drawer against acceptor, produce the bill, and prove the acceptance.

When an entry in a *book of accounts* is evidence, the book must be produced and proved by the clerk who made the entry, by proof of the clerk's death, and then proving his hand-writing; but, even where his death can be proved, this evidence is admissible only within a year after the making of the entry, if the books be those of a "tradesman or handicraftsman," and produced for the purpose of establishing a debt against one of his customers; which has been holden to extend to entries in a banker's books. But a tradesman's books, or other books of accounts, if produced at a trial, may be good evidence against the *owner*, or between other parties, after the year.

If the adverse party be in possession of any written instrument which would be evidence for you, you may serve either him or his attorney or agent, with a notice to produce it at the trial; but it must be served a reasonable time before, to enable the party served to produce it.

There is no occasion to give a notice to produce a mere

notice; for the copy of a notice is itself deemed an original, and may be given in evidence, with proof of service, without notice to produce the counterpart delivered.

The time for producing documents, &c. pursuant to this notice, is not until the opposite party has entered on his case; and it is optional with the party served, to produce the instrument or not; but if he do not, upon proving the service of the notice, you will be permitted to prove the contents by any other evidence, as if it had been destroyed or lost. But if it be produced, it must be proved in a regular way, and a judge, on summons, may give an order for an inspection of it, that you may be aware of the evidence necessary to prove it. Ship's articles, when they come out of the hands of the adverse party upon notice, in an action by a seaman for wages, are evidence of themselves.

With respect to *witnesses*, ascertain exactly what each can prove, and take a memorandum of their evidence, in order to insert it accurately in your brief.

If you are not certain that your witnesses will attend voluntarily, you must subpœna them. In ordinary cases, the common *subpœna* is sufficient process to compel their attendance. The *subpœna* must be engrossed on plain parchment, and may include the names of four witnesses. Take it, together with a *præcipe*, to the signer of the writs; pay 1*s*. 8*d*. signing, 7*d*. sealing. Then make out a copy of the subpœna for each witness, and serve it upon him personally, at the same time showing him the writ, and paying or tendering to him 1*s*. in town causes, if he live within the weekly bills of mortality, or his reasonable expenses, if he live at a greater distance, or the action is to be tried at the assizes. The witness should be served a reasonable time before the trial. If the cause be made a *remanet*, the *subpœna* must be re-sealed, and a copy of the *subpœna* again served.

Form of Præcipe.

—— to wit. Subpoena for W. W., T. W., S. W., and F. W., to testify between A. B. plaintiff, and C. D. defendant, on the part of the plaintiff [*or* defendant].

—— 1833.

P. A. plaintiff's [*or* defendant's]
attorney *or* agent.

Form of Subpœna.

William the Fourth, by the grace of God of the United Kingdom of Great Britain and Ireland, king, defender of the faith, to W. W. [*names of all witnesses included in the subpœna*], greeting:

We command you, that laying aside all and singular business and excuses, you, and every of you, be and appear in your proper persons, before our right trusty and well-beloved (*name of chief justice,*) our chief justice assigned to hold pleas in our Court before us, [*or, in Common Pleas,* "before sir" *name of chief justice,* "knight, our chief justice of the Bench;" *or, in the Exchequer,* "before sir" *name of chief baron,* "knight, lord chief baron of our Court of Exchequer at Westminster,"] at the Guildhall of the city of London, [*or in Middlesex,* "at Westminster-hall, in the county of Middlesex, *adding, in the Exchequer,* "in the place where our said Court of Exchequer is usually holden;" *or at the assizes,* "before our justices assigned to take the assizes in and for the county of , at , in the said county,"] on the day of instant [*or* next] by of the clock in the forenoon of the same day, to testify all and singular those things which you, or either of you, know in a certain cause now depending in our Court before us, [*or, in Common Pleas,* "before our justices," *or in the Exchequer,* "before the barons of our said Court of Exchequer,"] at Westminster, between A. B. plaintiff, and C. D. defendant, in an action on promises, [*or* "of debt," &c. *as the action is,*] on the part of the plaintiff, [*or* defendant,] and on that day to be tried by a jury of the country; and this you, or any of you, shall by no means omit, under the penalty, upon each of you, of £100.

Witness [*name of chief justice or chief baron*], at Westminster, the day of , in the year of our reign.

If a person, not a party to the cause, have any written instrument, &c. which could be evidence, you must serve him with a *subpœna duces tecum,* commanding him to bring and produce it. Let it be signed, sealed, and a copy served, in the same manner as the common *subpœna.*

Form of Præcipe for Subpœna duces tecum.

— to wit. Subpœna for W. W. to testify and produce, &c. between A. B. plaintiff, and C. D. defendant, on the part of the plaintiff [*or* defendant].

P. A. plaintiff's [*or* D. A. defendant's]
attorney *or* agent.
—— 1833.

The *subpœna* must be obtained from the Crown-office.

It is no excuse that the legal custody belongs to another, if it be in the actual possession of the witness; but if it tend to criminate himself, or his client, or if it be his title-deed, the Court will not compel him to produce it. If the witness deliver such papers to the opposite party, by whom they are withheld, the Court will allow secondary evidence of the contents.

If the witness be in custody at the time of the trial, the only way of bringing him into the Court to give evidence is by *habeas corpus ad testificandum.* This writ is obtained upon motion in Court, or application to a judge at chambers, founded upon an affidavit stating that he is a material witness, and willing to attend. The Court will thereupon make a rule, or the judge grant his *fiat* for the writ. Engross the writ on plain parchment, and get a judge's name indorsed on it. It must be directed to the officer in whose custody the witness is. Then take the writ, together with the præcipe, to the signer of the writs, and get it signed. Get it sealed. Then leave it with the officer to whom it is directed; pay or tender to him his reasonable charges for bringing up the witness, and he will bring him into Court on the day of trial, according to the exigency of the writ. By stat. 44 Geo. III, c. 102, a judge may award a writ of *habeas corpus* to bring up a prisoner from any gaol or prison in the United Kingdom, for the purpose of giving evidence.

There are three ways of proceeding against a witness who refuses or neglects to attend trial, after being regularly served, namely, by attachment, by action, on the stat. 5 Eliz. c. 9, and by action at common law.

If a witness be abroad, or be going abroad, or about to die, or be so ill or infirm that it is likely he will not be able to attend at the trial, or the parties consent that the deposition of the witness shall be read in evidence on the trial, you may apply to the Court for a rule, or a summons, to shew cause why the witness should not be examined, upon interrogatories or otherwise, or why a commission

should not issue for such examination; and such commission is absolutely requisite, if the witness be out of the jurisdiction of the Court. You obtain this *rule* upon an affidavit stating the witness to be material, and serve a copy of the rule or the summons on the opposite attorney.

If the witness be *within the jurisdiction of the Court*, apply to the Court, or to a judge for the rule or order. If you apply to the Court, deliver a brief to counsel, accompanied with the affidavit above mentioned: the rule obtained thereby will be only a rule *nisi* in the first instance: serve a copy of it on the opposite attorney. If you apply to a judge at chambers, take out a summons and serve it on the opposite attorney, and attend the summons as in ordinary cases.

If the witness be *out of the jurisdiction of the Court*, as out of the country, or the like, (and this whether he be within the king's dominions or not) apply to the Court, or to a judge, to grant a rule or order for a writ in the nature of a *mandamus*, or commission to be issued to the judge or judges of the Court in whose jurisdiction the witness is, or to commissioners to be appointed and approved of by the parties, for the examination of the witness on oath by interrogatories or otherwise

The rule obtained hereon is a rule *nisi*, a copy of which should be served on the opposite attorney.

THE NISI PRIUS RECORD.

The *nisi prius* record consists of four parts; the first *placita*; pleadings, &c.: the second *placita*; and the *jurata*. It is made up by the attorney, and must be written on one or more skins of parchment (according to the length of the issue); the two *placita*, in a large text hand; the pleadings, &c. and the *jurata*, in a full, fair engrossing hand.

First Placita.

The first *placita* is in this form:

Pleas before our Lord the king at Westminster, on , the day of , A.D. [*the day on which the issue was made up*] as of term [*being the term in, or, if made up in vacation, then the term preceding which the issue is made up*], in the fifth year of the reign of our sovereign lord William the Fourth, by the grace of God, of the

United Kingdom of Great Britain and Ireland, king, defender of the faith, and in the year of our Lord 183

Next, write the number of your issue-roll thus, "*Roll* 526," underneath the *placita*, at the right-hand side of the sheet.

The Pleadings, &c.

Next copy the issue verbatim to the end of the award of the *venire*.

Second Placita.

After the award of the *venire*, write the second *placita*, thus:

Pleas before our lord the king at Westminster, of term, [*being the term in or after which the cause is intended to be tried*] "in the fifth year of the reign of our sovereign lord William the Fourth," [*&c. as in the first placita.*]

Jurata.

Next follows what is termed the "*jurata.*" If the cause is to be tried at Westminster or in London, enter it thus:

Middlesex [*or* London] to wit: The jury between A. B. by his attorney, plaintiff, and C. D. defendant, in an action on the case [*or as the form of action may be*] is respited before our lord the king at Westminster, until [*here insert the return of the distringas*]* unless the right honourable Sir Thomas Denman, knight, his Majesty's chief justice, assigned to hold pleas in the Court of our said lord the king before the king himself, shall first come on Saturday, the twenty-sixth day of November [*insert the first day of the sittings at which the cause is to be tried*] at Westminster in the county of Middlesex [*or*, "at the Guildhall of the city of London"] according to the form of the statute in such case made and provided* for default of the jurors, because none of them did appear: therefore let the sheriff have the bodies of the said jurors, to make the said jury between the parties aforesaid, of the plea aforesaid, accordingly; the same day is given to the parties aforesaid, at the same place.

When the trial is to be at the bar of the Court, the above *Nisi Prius* clause, between the asterisks, from the word "*unless*" to the word "*provided*" inclusive, must be omitted; and the jurata will then stand thus:

The jury, &c. is respited before our lord the king at Westminster, until the day of , for default of the jurors, because none of them did appear: therefore, &c. as above.

If the cause is to be tried at the assizes, insert the county in the margin of the jurata; and, instead of the above clause of *Nisi Prius* between the asterisks, insert the following: "Unless his Majesty's justices assigned to take the assizes in and for the county of , shall first come on [*the commission day*] at [*the place where the assizes are to be holden*] in the said county, according to the form," &c. as above, to the end. Then add, in the same paragraph, the entry termed the *sciendum*, thus: "And be it known that the king's writ on record was delivered to the under-sheriff of the said county, on Tuesday the thirty-first day of January [*insert the last day of the term preceding the assizes*] in this same term, before our lord the king at Westminster, to be executed according to law, at his peril.

In country causes (excepting such as are to be tried in counties palatine), the record of *Nisi Prius* concludes with the *sciendum;* in town causes, it concludes with the *jurata*. But when the action is to be tried in a county palatine, there is no second *placita*, *jurata*, or *sciendum* entered on the record of *Nisi Prius*, but it concludes with the award of the *mittimus*, as in the issue roll.

When the record of *Nisi Prius* is engrossed, get a roll of the day and term the issue is entitled, and get a number for it. Make an *incipitur* of the issue (that is, proceed in your entry as far as a part of the declaration) on the issue roll, and take it, together with the record of *Nisi Prius*, and a copy of the issue, to the clerk of the judgments, who will enter the issue, and mark the record, roll, and issue paper; pay him 3*s*. 6*d*. for the first ten sheets, and 1*s*. for every six sheets after. At the same time, docket your entry, and take the record to the clerk of *Nisi Prius* for London and Middlesex, if the cause is to be tried in London or Middlesex, or to the clerk of *Nisi Prius* for the circuit on which the cause is to be tried, by whom it will be examined, sealed, and passed; pay 7*s*. 6*d*. for the first eight sheets, and 7*s*. for every eight sheets after; and pay 6*d*. for sealing.

If the cause is to be tried in a county palatine, after getting the *Nisi Prius* record sealed and passed in the manner now mentioned, engross a mittimus on a plain

piece of parchment, get it signed (pay 1*s*. 8*d*.) and sealed (pay 7*d*.) Send it, together with the record, to the attorney in the country, who will sue out the jury process and get it returned.

In town causes, the record of *Nisi Prius* must be sealed on or before the day appointed by the chief justice, in the sittings paper for the trial. It must, however, be sealed in time to have the cause entered with the marshal.

In country causes, the record cannot be sealed after three weeks from the end of the term, unless a judge's order be obtained for that purpose. This order, however, is now granted of course; and upon paying the clerk of *Nisi Prius* 2*s*. for it, he will seal the record at any time before the assizes, and obtain the order afterwards at his leisure.

When the cause stands over from one sitting to another, you must (before the sitting to which the cause stands over) get the marshal to alter the jurata; pay him 5*s*. Get the distringas from him; alter it, and get it resealed; and get the record of *Nisi Prius* also resealed, otherwise the cause cannot be tried, and the marshal is prohibited from inserting the cause in the daily list for trial.

A copy of the particulars (if any) of the plaintiff's or of the defendant's set-off must be annexed to the record, at the time it is entered with the judge's marshal.

THE JURY PROCESS.

The two writs, by virtue of which a jury are summoned in this Court, are the *venire facias* and the *distringas*. The *venire facias* merely commands the sheriff that he *cause to come* before the king at Westminster, on a day therein mentioned (being a day previous to the intended trial of the cause) twelve free and lawful men, &c. to make a certain jury of the country between the parties. Upon the jurors (supposed to be summoned by virtue of this writ) making default at the return of it, the *distringas* is supposed to issue. This writ commands the sheriff to *distrain* the jurors, already returned on the *venire*, by their lands and goods, so that he may have their bodies before the king at Westminster, on a day therein mentioned, to make a certain jury between the parties, &c. In practice, however, the *venire* and *distringas* are sued out at the same time; and, upon being delivered to the sheriff or his agent,

he immediately returns them, and causes the jurors to be summoned.

This is the jury process, when the trial is intended to be at bar. When the trial is intended to be at *Nisi Prius*, the *distringas* is made returnable before the king on the return day next after the time the cause is intended to be tried, *unless before* that time the chief justice or the judges of assize should come on a certain day therein mentioned, to the place intended for trial, and which of course is always the case; and the sheriff accordingly summons the jury to attend at the time and place mentioned in this clause of *Nisi Prius*.

The *venire* must be directed according to the award of it on the roll; that is, if the *venire* have been awarded to the sheriff, or to the coroner or elizors, the *venire* must be directed accordingly to the sheriff, or coroner, or elizors, respectively.

It shall direct the sheriff "to return twelve good and lawful men of the body of his county, qualified according to law; and the rest of the writ shall proceed in the accustomed form."

In substance, also, the *venire* must correspond with the award of it on the roll. Thus, if the award be general, to make a jury between the parties of the plea or action, whatever it may be, the writ must also be general; or if the award be special,—as to try issues in fact, and assess damages upon issues in law,—or to try issues as to defendants who have pleaded, and to assess damages against defendants who have allowed judgment to go by default,—the writ must also be special.

The *venire* bears teste on the first day of the term in or after which the cause is to be tried. It is made returnable, on some day certain in term, before the trial, or if it be a country cause, then on the last day of the term. It is not necessary, in any case, that there should be fifteen days between the teste and return of this writ.

The *distringas* must be directed in the same manner as the *venire*. It must also correspond with the *venire* in substance; and be general or special, as the *venire* is general or special.

The *venire* and *distringas* are sued out together; and must in all cases (except when the defendant proceeds to trial by proviso) be sued out by the plaintiff, even in cases where the defendant has moved for a special jury. They are sued out thus: Get a blank *venire* and *distringas* at the stationer's, and fill them up. Get them sealed; pay 7*d.* each;

they do not require signing. In Middlesex, take the *distringas* to the sheriff's office, and get it returned; pay 14*s*. 8*d*.; and annex it and the panel to the *Nisi Prius* record; the *venire* is not used, and is sued out merely for the purpose of having it allowed in costs. In London, you get the *distringas* returned at the secondary's office, in Coleman-street; pay 4*s*. 4*d*. if the jury be common, 8*s*. 8*d*. if special. In country causes, you get the *venire* returned by the sheriff's deputy in town, and the *distringas* by the under-sheriff in the country: and annex them both, together with the panel, to the *Nisi Prius* record.

The stat. 6 Geo. IV. c. 50, directs the mode in which the jurors, in common jury cases, are to be chosen, summoned, and returned.

The manner of procuring this special jury is thus: Get counsel's signature to the motion paper; take it to the office of the clerk of the rules, and draw up the rule; pay 6*d*. Get an appointment from the master on the rule; and serve a copy of the rule and appointment upon the opposite attorney; and also upon the under-sheriff, or in London upon the secondary. In London and Middlesex, at the sittings *after* term, this must be done, and the cause *marked* in the marshal's book as a special jury cause, on or before the day preceding the adjournment day in Middlesex and London respectively.

If the defendant's attorney do not serve it, and mark the cause as a special jury cause within due time, the cause may be tried by a common jury, and the defendant lose the benefit of his rule. At the time appointed, attend at the master's office, when the sub-sheriff will also attend with the jurors' books and the special juror's list, and numbers written on pieces of parchment or card corresponding with the names in such list; the master then puts the numbers into a box, and, having shaken them together, draws out forty-eight of them, one after another, and, as each number is drawn, refers to the corresponding number in the special juror's list, and reads aloud the name designated by such number. At the time of reading each name, either party or his attorney may object to the person named as being incapacitated from serving on the jury, and if he prove the same to the satisfaction of the master, such name shall be set aside, and another number drawn instead thereof, which may in like manner be challenged; and so on, until forty-eight names shall be chosen.

If the whole of the forty-eight names cannot be obtained in this way, the master may nominate the remainder, in the

manner he has heretofore done. Or, by consent of the parties, the jury altogether may be nominated in the manner hitherto adopted. And if the cause of action have arisen in a county of a city or town (other than London,) the jury must be nominated in the manner hitherto adopted. The master's clerk will furnish each party with a list of the names of the forty-eight jurors, their additions and places of abode; pay the master two guineas, the sub-sheriff two guineas, and the master's clerk 5s. When you are ready to strike the special jury, get another appointment from the master, and serve a copy of the rule, with the second appointment, on the opposite attorney. Attend at the time appointed, and the master will strike out twelve names for each party, at their desire, beginning with the plaintiff; or if either of the attorneys do not attend, the master will proceed *ex-parte,* and strike out twelve names for the party absent. The master's clerk will then make out lists of the twenty-four names remaining, and give them to the attorneys. Let the plaintiff's attorney make out a special distringas, containing the twenty-four names in the list; and get it sealed and returned, as before directed. If the *distringas* be directed to the sheriff of Middlesex, the notice for summoning the jury and the *distringas* must be left at the sheriff's office before seven o'clock in the evening next but one before the day on which the jury shall be required to attend (Sunday not included); and notices for countermanding the summoning of special juries shall be before twelve o'clock at noon of the day next preceding that for which the jury was to have been summoned. In all counties, &c. except in London and Middlesex, the special jurors shall be summoned three days at least before the day on which they are required to attend; and consequently the *distringas* must be left at the sheriff's office in sufficient time to have the jurors summoned accordingly.

Obtaining a rule for a special jury, is now a common mode of delay adopted by defendants, as they can in general gain a term by it.

In cases where it may appear to the Court, or a judge, to be necessary that the jury should have a view of the premises in question, previously to trial, they have authority to order in the *distringas* that the sheriff shall have six or more of the jurors, returned to try the cause, at the place in question, some convenient time before the trial, and that the place in question shall be then and there shewn to them by two persons to be named in the writ, and appointed by the Court or judge. And by a

rule of Court, upon every application for a view, the sum to be deposited with the under-sheriff shall be £10 in case of a common jury, and £16 in case of a special jury, if the distance at which the view is to be made, and the distance thereof from the office of the under-sheriff, do not exceed five miles; and £15 in case of a common jury, and £21 in case of a special jury, if it be above five miles.

ENTRY OF THE CAUSE FOR TRIAL.

When the trial is to be at bar, the cause is entered with the clerk of the papers; and the day appointed for it must be entered in his book, previously to notice of trial being given. Leave the record with him; leave him also a draft of the issue, and he will make out four copies of it for the judges, and have them delivered.

At *Nisi Prius*, in town, take the record, with the distringas and panel annexed, to the marshal's office, and enter the cause for trial; pay him 11*s*. 8*d*. A copy of the particulars of plaintiff's demand, and also particulars (if any) of the defendant's set off, must be annexed to the record by the plaintiff's attorney at the time of this entry.

Causes intended to be tried in London or Middlesex, at any of the sittings in term, must be entered with the marshal two days previously to the sittings; otherwise the marshal, at the request of the defendant or his attorney, may enter a *ne recipiatur*. Causes intended to be tried at the sittings after term, must be entered, and the records delivered to the marshal, at the times following; viz. the causes in Middlesex, the first day of the sitting after term, in Middlesex; and the causes for London, two days before the adjournment-day in London. Where the cause is to be tried at the sittings after term, a *ne recipiatur* cannot be entered until after proclamation made by order of the chief justice for bringing in the records; and then, if the record be not brought in, the defendant's attorney may enter a *ne recipiatur*. In special jury causes in London and Middlesex, the rule for the special jury must be served, and the cause marked as a special jury cause in the marshal's book, on or before the day preceding the adjournment day in Middlesex and London respectively: otherwise the cause cannot be tried.

When the cause is made a remanet, get the marshal to alter the *jurata*, and alter the *distringas* in conformity with

it: get the record and *distringas* resealed; annex the *distringas* to the record; and leave it with the marshal.

When you have passed the record, get the *venire* returned by the sheriff's deputy in town; and send the record, *venire*, and *distringas*, to the attorney in the country. Let him get the *distringas* returned by the under-sheriff; and, having annexed the *venire*, *distringas*, and panel to the record, let him take them to the judge's lodgings, and enter the cause with the marshal; pay 4*s*. 8*d*. The writ and record must be entered together, otherwise the marshal shall not receive them. Annex the particulars of demand or set-off, if any, to the record at the time of entering, as in the case of a trial in town.

The record must be entered with the marshal before the first sitting of the Court after the commission-day; except in the counties of York and Norfolk; and in the city of Norwich, and in the county of York, on or before the second day after the commission-day, unless otherwise ordered by the judge; and in the county of Norfolk and city of Norwich, before the sitting of the Court on the day after the commission-day. The judge sitting at *Nisi Prius*, however, may in his discretion, and under particular circumstances, allow his marshal to receive a record and enter the cause for trial, after the time limited by these rules. But he will seldom allow it; and this although no *recipiatur* has been entered by the defendant.

The marshal shall order a list of the causes so entered to be fixed up in some public place in the *Nisi Prius* Court.

If the cause be made a *remanet* at the assizes, get the record, &c. from the associate; alter the *jurata*, and sue out a *venire de novo* and *distringas*, and proceed as in ordinary cases. If there have been a view, however, you cannot sue out a *venire de novo*, but must sue out an *alias distringas*.

If the cause is to be tried in a county palatine, get the record examined, sealed, and passed. Write out a *mittimus* on a plain piece of parchment, and get it signed (pay 1*s*. 8*d*.) and sealed, pay (7*d*.) Send it, together with the record, to the attorney in the country, who will sue out the jury process, and get it returned. The cause is then entered with the marshal, as in ordinary cases.

THE BRIEF.

The next business is to prepare *the brief* for counsel, in which every matter must be stated accurately, and with

as much brevity as possible. The brief generally consists of three parts: 1st, an abstract of the pleadings; 2d, a statement of the case; and, 3d, a statement of the proofs. To these must also be added such observations as may tend to give the counsel a clearer view of the case. It may be in this form:—

In the King's Bench.

Between { A. B. Plaintiff, and C. D. Defendant.

Middlesex.—The plaintiff declares, for that whereas, &c. [Here set forth the declaration and pleadings at length, if they be special, or as shortly as you can when general, beginning each with a new line.]

"CASE."

[Here state the facts and circumstances of the case, as they will be established by your proofs, or as they actually occurred; but avoid stating anything not belonging to the matter in question.]

"PROOFS."

Will prove the order of the defendant for the goods in question, and the delivery of the goods at the defendant's warehouse. } James Day.

"OBSERVATIONS."

[Under this head state any matter you may wish to suggest; such as the case which the opposite party will probably attempt to establish, the evidence by which he intends to establish it, any matter affecting the competency of his witnesses, points to which it may be advisable to cross-examine them, points of law which may arise out of the case, or evidence on either side, &c. so as to anticipate, if possible, every thing likely to occur in the course of the trial, and prevent your counsel from being taken by surprise.]

Indorse on your brief the name of the Court and of the cause, the name of the counsel to whom you intend to send it, and the amount of the fee to be given with it, with the sittings, &c. at which the cause is to be tried, and its number in the List of Causes. If you send briefs to two counsel, add their names also, thus:—"*With you, Mr.*———."

The mode of preparing the brief *for the defendant* rests upon similar principles with that of preparing the brief for the plaintiff. The facts of the case must be clearly stated to counsel, in the simplest way, without any attempt to make a *bad case* look like a *good one*, or the defendant will find to his cost, that while he was imposing upon his counsel, he was, in fact, deceiving himself in the grossest way. Little can be done in the best case, unless the counsel thoroughly understands the matter; but in a bad case, or a mixed sort of case, in which the points *for* a client and *against* him, are blended together, the *worst side* of the case ought rather to be presented than the best; for it is safer to be cautious than to be rash; and where a counsel is instructed that he must trust *to himself*, rather than to his case, he will be bound to take all the care he can that his client is not taken any undue advantage of; but where he is told that he may trust to matters that turn out to be untrue, or to witnesses who are positively contradicted, he loses all confidence in his instructions, and will be justified in leaving the cause to take its own course. Most men are aware of the *leading difficulties* which exist against their pretensions; but many suppress them from a false pride of appearing to have a better case than they have; and many more from a false cunning, which imagines if it can impose upon one, it can impose upon many. We trust that the *defendants* who may peruse this work, will have both more sense and more honesty than to fall into either of these very preposterous errors. If a man were to fall into a ditch up to his chin in water, he would not surely tell the passers by, who could not see him, to look for him in the wood hard by, where he was not; but if he did, and they left him to perish in the ditch, while they looked for him in the wood, he would have nobody but himself to blame for the mischief that followed. And the defendant who deceives his counsel, and induces him to look for support in circumstances in which he will not find them, is a blockhead of a similar description.

TRIAL AT BAR.

A trial at bar cannot at present be had without the leave of the Court, and it is entirely discretionary to grant it or no., unless the crown be interested, when the

attorney-general may demand it of right; and if a judge or a master in chancery be a party, it will be granted as of course.

In other cases, very sufficient reasons must be stated by affidavit, to induce the Court to grant a trial at bar; for it is very expensive, and materially delays other business. The grounds for granting it are, that the matter is of considerable value, the inquiry likely to be long, and difficulties are expected to arise in the course of it.

A trial at bar must be moved for in the term previous to that in which the cause is intended to be tried, unless the action be for lands in Middlesex; and not on the last paper day of the term, unless on the part of the crown. The motion is for a rule *nisi* only, and must be supported by an affidavit.

The judges may appoint any day for the trial. There must be *fifteen* days' notice of trial; and previously to its being given, draw up the rule for the trial at bar with the clerk of the rules, and serve a copy of it on the opposite attorney. Then take it to the clerk of the papers, and enter in his book the day appointed for the trial. Leave with him, at the same time, a draft of the issue, that he may make out copies of it for the judges. Notice must be given to the prothonotary, or chief clerk, before giving notice to the opposite party.

You may countermand your notice of trial, as in other cases; but the cause cannot afterwards be tried, without a new rule being obtained for that purpose.

The action is tried by a jury, in the same manner as if tried at *Nisi Prius*. The jury is almost always special; and the rule for a special jury forms part of the rule for the trial.

If, when the trial is called on, a sufficient number of jurors do not attend, the trial must be adjourned, and a *tales* of *eight* or *ten* awarded, as at common law; for the stat. 6 Geo. IV. c. 50, s. 37, which allows the *tales* of the bystanders, is expressly confined to trials at *Nisi Prius* and the assizes.

The judges may appoint any day for the trial they think fit, and it is had in the Court of King's Bench at Westminster; and the jury (from the county into which the *venire* was awarded) are obliged to attend there, at their peril, upon the return of the *distringas*.

TRIAL AT NISI PRIUS.

At *Nisi Prius*, every cause ought to be tried in the order in which it has been entered. In town causes, the special jury cases are generally deferred until the sittings after term, except when specially appointed. *Remanets* are generally taken before fresh causes. Not more than twenty-four days, exclusive of Sundays, after any Hilary, Trinity, and Michaelmas term, nor more than six days, exclusive of Sundays, after any Easter Term, to be reckoned consecutively, immediately after such terms, shall be appropriated to sittings in London and Middlesex, for the trial of issues of fact: but a day may be specially appointed, not being within such twenty-four days, for the trial of any cause at *Nisi Prius*, with the consent of the parties thereto, their counsel, or attorneys.

At the sittings at *Nisi Prius*, for Middlesex and London, in order to enable the plaintiff to obtain judgment of the term, it is the practice to appoint a particular day for the trial of actions on bills of exchange and promissory notes, unless an affidavit of reasonable ground for delay be produced.

At the sittings at *Nisi Prius* for Middlesex and London, there are written lists of the causes to be tried each day, affixed on the outside of the Court; and a cause being in such list, is deemed notice to the attorneys concerned, that it may be tried any time during the day.

The judge is not bound to try a cause founded on a wager, as on the event of a boxing-match, dog-fight, cricket-match, &c.

If the cause be coming on, and you are not prepared to proceed on the trial, you may withdraw the record. Where the record is thus withdrawn, and afterwards re-entered and tried, and the plaintiff has a verdict, the master will not allow the costs of the second entry and attendance of witnesses, &c.

If the record be not withdrawn, the attorneys for the plaintiff and defendant should take care to be in Court, to have their counsel in Court, and their evidence and witnesses in readiness, when the cause is called on; otherwise, if the plaintiff's attorney and witnesses be not in attendance, the plaintiff will be nonsuited, or the Court will order the cause to be struck out of the list, and the plaintiff will have to pay the costs of the day: or, if the defendant's attorney and witness be not in attendance, the defendant will lose the benefit of his defence, and the

plaintiff will most probably obtain a verdict. The counsel for the plaintiff, upon his cause being called on, may request the swearing of the jury to be suspended, until a necessary witness has been called upon his *subpœna*, and if he is absent, the counsel may then withdraw the record and thus avoid a nonsuit, which, if the jury had been first sworn, he must have submitted to.

When the cause is called on, the record, or an abstract of it, made out by the judge's marshal, is handed to the judge, in order that he may know the issues the jury have to try.

By stat. 6 Geo. IV. c. 50, s. 26, the under-sheriff is to cause the name, addition, and place of abode of each person summoned and impanelled to serve on the jury, to be written on distinct pieces of parchment or card, and to be given to the associate, prothonotary, or secondary, to be put into a box provided for that purpose. And, by the same section, when the cause is called on, such associate, &c. shall draw out twelve of these pieces of parchment or card, one after another; and if any of the jurors, whose names are so drawn, do not appear, or if challenged, and the challenge be allowed, then other names shall be drawn, until twelve jurors shall appear, and after all causes of challenge allowed, shall remain as fair and indifferent; and these twelve persons being sworn, and their names being marked in the panel, shall be the jury to try the cause; and their names shall be kept apart until they return their verdict, and shall then be returned to the box.

When the jury come to the book to be sworn, either party may *challenge* them.

If a sufficient number of jurors do not appear, or if, after challenge, a sufficient number do not remain, then, upon request of the *plaintiff or defendant*, the justices may command the sheriff to name so many of such other able men of the said county, then present, as shall make up a full jury. But if neither of the parties will request this, the cause must go off for want of jurors.

It is a general rule, that the party who has to maintain the affirmative of the issue, must begin to give the evidence. But the defendant is to begin in an action for a libel, where a justification is pleaded, without the general issue. So, in an action for trespass *quare clausum fregit*, or for injuring personal property, or for an assault, &c. where there is a plea of justification only, the defendant may begin. Where, to a declaration in trespass, the

defendant pleaded, as to coming with force and arms, and whatever else was against the peace of our lord the king, not guilty, and, as to the residue of the trespasses, a right of way, Mr. Justice Bailey held that the defendant should begin, because the first part of the plea was not a general issue, and did not throw the necessity of any proof upon the plaintiff. Where a special defence is intended to be given in evidence under the general issue, that party shall begin who would have been entitled to do so if the defence had been specially pleaded. Thus, in ejectment, where the lessor of the plaintiff claims by a title, which is admitted by the defendant, but the defendant claims under a title destructive of that of the lessor of the plaintiff,—as where the lessor of the plaintiff claims as heir-at-law, and the defendant as devisee under a will which is impeached by the plaintiff; or where the lessor of the plaintiff claims under a will, and the defendant under a subsequent codicil which is impeached by the plaintiff, the defendant is entitled to begin. But where, in ejectment, each party claimed as heir-at-law, and the real question was as to the legitimacy of the defendant, who was clearly heir, if legitimate, and proposed to admit that, unless he were legitimate, the lessor of the plaintiff was the heir-at-law; it was holden, that this admission did not give him the right of beginning. In replevin, where the defendant avowed for rent, the plaintiff pleaded in bar an agreement to set off another sum against the rent, and issue was taken on that plea, the plaintiff was held entitled to begin, the affirmative being on him. So, where, in replevin, there was a cognizance for rent in arrear, to which there were two pleas, the one stating that a certain agreement had been entered into between the landlord and tenant, and the tenant was subsequently induced by the landlord to enter into another agreement, which second agreement was the demise in the cognizance mentioned, and that this latter agreement had been abandoned by mutual consent, before any rent became due, and the other plea was similar, except that it averred that the tenant was induced to enter into the second agreement by fraud; and there was a replication to the first plea, denying the abandonment, and to the other, denying the fraud; it was holden that, on these pleadings, the plaintiff had the right to begin.

The junior counsel states shortly the substance of the pleadings to the jury, and the points upon which issue has been joined. The senior counsel on the same side then

states the facts and circumstances of the case to the jury, the substance of the evidence he has to adduce, and its effect in proving the case stated, and he remarks upon any point of law, on which, together with the matters of fact, the jury will have to found their verdict.

After the senior counsel has thus stated the case, the witnesses to prove it are next called and examined in their order; the first is examined by the counsel next in rank to the senior; the second by the junior, if there be three counsel engaged on that side; the third by the senior: each barrister examining a witness, in the order of his precedence. Where there are several defendants, who have separate attorneys and counsel, if their defences be different or distinct from each other, the counsel of each may address the jury, and examine witnesses, but if they rely on the *same* ground of defence, only one counsel can be heard to address the jury, and one counsel only can examine each witness upon the part of all the defendants:—and where two defendants appear and plead by the same attorney, but counsel appear for one defendant only, and the other defendant appears in person, the counsel only will be allowed to address the jury; but the defendant, who has no counsel, may cross-examine the witnesses.

In the direct examination of a witness, he must not, in general, be asked leading questions. Yet where a witness swears to a certain fact, and another is called for the purpose of contradicting him, the latter may be asked directly whether that fact ever took place. So, if the witness appear evidently hostile to the party who has called him, the counsel may put leading questions to him, in the same manner as in a cross-examination, having first obtained the permission of the court to do so.

If you object to any witness, on the ground of incompetency, do so before he is examined in chief. After the witness has left the box, you cannot question his competency. If the supposed incompetency arise from conviction of any crime, you must prove the record of the conviction.

If the supposed incompetency arise from interest, the witness may be examined, and he will be allowed afterwards to prove that his interest has determined, without producing the instrument by which it was determined; but if his interest have been proved by other witnesses, the instrument must be produced. And in all cases where a release is necessary to give competency to a witness, it must be produced and proved.

A witness is allowed only to speak of facts within his own knowledge and recollection. He cannot, therefore, be permitted to read his evidence; but he will be allowed to refresh his memory from any book or paper, if he can afterwards swear to the fact from his recollection, and this though he did not himself make the entry. If he know the fact, however, only from seeing it in the book or paper, the original book or paper must be given in evidence, and proved by other means. Where a witness, on seeing his initials affixed to an entry of payment, said, "I have no recollection that I received the money; I know nothing but by the book; but, seeing my initials, I have no doubt that I received the money;" this was held sufficient evidence. Where a paper is put into the hands of a witness to refresh his memory, the opposite counsel has a right to inspect it, without being forced to read it in evidence.

On questions of science, a witness may be examined as to his *opinion*, upon facts previously stated; thus, although a physician may have never seen the patient, he may swear to his opinion of the disease, &c. upon facts stated by others.

The plaintiff or defendant must not call witnesses to disprove what his own witnesses have already sworn; unless, perhaps, where what the witness swears is palpably false, and it would be a great injustice to allow the party's case to be sacrificed for that reason. But the opposite party may call witnesses for that purpose; or may give in evidence what the same witness swore at another time about the same matter, in order to prove a variance, and thereby detract from his credit.

It is often advisable to examine witnesses out of the hearing of each other, to obviate the danger of a connected story among them, and prevent the influence one may have upon another, and they are then ordered out of Court, with notice that they will not be examined if they remain. But where a witness remains in Court after such order, the judge may allow him to be examined or not, subject to observation on his conduct; but, in the Exchequer, he is peremptorily excluded from being examined, if he remain in Court after an order to quit it. If the attorney is a witness, he may remain, his assistance being necessary.

When the direct examination is finished, the witness may be cross-examined by the opposing counsel. But if the party calling a witness, do not examine him after he

is called and sworn, he may nevertheless be cross-examined by the counsel for the opposite party. In cross-examining a witness, the counsel may ask leading, or, indeed, any questions at all relevant to the cause, and he may even be cross-examined as to a fact irrelevant to the issue, for the purpose of discrediting his testimony by what he himself may state in evidence.

If any new fact arise out of the cross-examination, the witness may be re-examined to it; and he may be re-examined, when necessary, in order to explain any part of his cross-examination.

The plaintiff must adapt his evidence to the proof of the matter in issue; for where, in an action for an assault, with but one count in the declaration, the plaintiff, having proved one assault, wished to abandon that and prove another, the Court would not allow him. Nor will the Court allow counsel to prove any other case than that stated to the jury; therefore, where counsel, in his address to the jury, confined himself to a case upon a bill of exchange, the Court would not afterwards allow him to prove a case under the money counts. And after the plaintiff's case has been *closed*, the court will not permit him to remedy a defect in his evidence, by calling back a witness or otherwise. unless such defect arose from inadvertency on the part of his counsel.

When the party opening the cause has gone through his evidence, examined all his witnesses, and closed his case, the senior counsel of the opposite party then states to the jury the matter of his client's defence, the evidence (if any) in support of it, and remarks on the case and evidence of the other party. The witnesses for the defence (if any) are then examined and cross-examined, and here the defence closes.

If the counsel for the defence examine any witnesses, or adduce any evidence in support of it, or even state any new fact to the jury, and have not given evidence in proof of it, the opposite party is entitled to the reply, as of right; otherwise not, unless when the king is a party. But where the counsel for the defendant opens facts to the jury, and calls no witnesses to prove them, it is in the discretion of the judge to permit the reply. Where the defendant impeaches the plaintiff's case, and also sets up an entire new case, which the plaintiff controverts again by evidence, the defendant's reply in such case is confined to the new case set up by him, for his counsel has already commented in the opening of the defendant's case, and

the plaintiff is entitled to the general reply. Where the defendant proves a payment to the plaintiff, by showing the particulars of demand delivered under a judge's order, in which the plaintiff has credited the defendant, this is the evidence of the defendant, and entitles the plaintiff to a reply. But if certain parts of a book are used to refresh the memory of a witness for the plaintiff, and the defendant's counsel observe upon the general state of the book, and refer to other parts of it, such observations do not give the plaintiff's counsel the right of reply. In the Common Pleas, the defendant giving evidence of payment of money into court, under a rule, will not entitle the plaintiff to the reply. Before he replies, the plaintiff's counsel may, if he think proper, produce evidence to disprove any part of the defence set up by the defendant; in which case the defendant's counsel has the privilege of again addressing the jury, but his observations must be confined to the evidence thus given by the plaintiff. The reply then closes the case on both sides.

When the case is closed, if the plaintiff do not elect, or have not previously elected, to be nonsuit, the judge states to the jury the matters really in dispute; he recapitulates the evidence given from his notes, and makes remarks when necessary; if any question of law be mixed up with the questions of fact, he states the principles of law upon which the case must be decided, and their effect upon it; and, lastly, he states, if necessary, the form in which they are to give their verdict.* As this, however, is merely an assistance to the jury, the judge will omit any part he may think necessary; and where the case is very clear, both in point of law and fact, and it is apparent that the jury have already determined on a verdict according with the justice and merits of the case, the judge will omit the summing up altogether.

During the trial, after the jury are sworn, the parties frequently agree to *withdraw a juror* at the recommendation of the judge, where it is doubtful whether the action will lie, or where the judge intimates an opinion, that, under the peculiar circumstances of the case, the action should proceed no further. When a juror is withdrawn, each party pays his own costs.

At any time before the jury actually give their verdict, the defendant may plead, in abatement or bar of the action, any matter of defence arising *since the last continuance*, that is, since the return of the *venire*. This is termed a plea *puis darrein continuance*. When this plea is

pleaded and received, it is entered on the back of the record of *Nisi Prius*, and certified to the Court above; and all further proceedings in the cause, at the assizes or *Nisi Prius*, are thereby suspended. We shall speak more of it hereafter.

If, during the trial, you wish to object to the opinion and direction of the judge, to the competency of a witness, the admissibility of evidence, or for overruling a challenge, or refusing a demurrer to evidence, you may tender a bill of exceptions; and this is afterwards determined in a court of error.

When you think that the facts proved do not maintain the issue, this being a point of law, you may withdraw it from the consideration of the jury, by demurring to the evidence; which demurrer will afterwards be determined by the court in which the action was commenced.

If the plaintiff find his evidence is not sufficient to maintain his case, he may elect to be nonsuit, in order that he may have an opportunity of bringing it on again, either in another shape, or when better prepared with evidence. This is done usually after the plaintiff has closed his evidence, or after the defendant's case is closed and before the judge has summed up; but it may be done at any time before the jury have delivered their verdict.

If no plea *puis darrein continuance* be put in and received, and if there be no demurrer to evidence, or if there be no nonsuit, the jury, after the evidence is given, and the judge has summed it up, proceed to consider of their verdict. After the evidence is given, and the case closed on both sides, the jury must be kept together, without meat, drink, or fire (candle-light only excepted), until they have delivered their verdict, unless otherwise ordered by the judge. They must not speak with any person whatever, until they have *agreed* upon their verdict, except the bailiff, who keeps them. If they eat or drink at their own expense, or at the expense of either of the parties, they subject themselves to be fined; and if at the expense of the party for whom they afterwards give their verdict, it also avoids the verdict.

But where a trial was not concluded the first day, and the jury separated and went to their respective homes, without the assent or knowledge of the defendant; the Court held it no ground for granting a new trial, unless it could be shewn some improper attempt had been made to tamper with the jury whilst thus separated. If the jurors do not agree in their verdict at the assizes before

the judges are about to leave the town, the judges are not bound to wait for them, but may carry them round the circuit from town to town in a cart. If the jury determine their verdict by lots, the verdict shall be set aside and the jurors fined; but the verdict in such a case cannot be impeached upon the testimony of any of the jurors themselves; the fact must be substantiated by other evidence.

The jury either form their verdict in the jury-box, or, where there is a difference of opinion, they may withdraw for the purpose; and they may take with them letters patent, deeds under seal, and exemplifications of depositions in equity, if the witnesses be dead; and, with the assent of the parties, books, or writings not under seal. But they cannot take evidence which has not been shewn to the Court.

They may return into Court to hear evidence as to any matter of which they are in doubt, or to ask any question of the Court.

If one of the jury be taken suddenly ill, the Court may discharge that jury, and charge another with the cause.

If the jury are likely to be absent any considerable time, another cause is called on, and another jury drawn and sworn: and when the first jury return to deliver their verdict, or for any other purpose, the Court for a while suspends the proceedings in the second action.

When the jury return to the bar, they are asked if they have agreed upon their verdict, and whether they find for the plaintiff or the defendant. The foreman of the jury, in the presence and hearing of the remainder of the jurors, then delivers the verdict, and it is recorded. This verdict is either general or special; general, when the jury find generally for the plaintiff, and state the damages, or for the defendant; special, when they find the facts of the case specially, as proved. The verdict is also either public or privy. A public verdict is that which is given by the jury in open Court, whilst the Court are sitting. A privy verdict is given before one of the judges of the Court, after the Court have risen; but it must be observed, that if the judge *adjourn* the Court to his lodgings, and the jury there deliver their verdict, this will be a public and not a privy verdict. A privy verdict also must be confirmed by the jury in open Court, before it can be recorded; before which time the jury may vary from it if they think proper; but after a verdict is recorded, no alteration, however slight, can be made in it.

If the jury find a verdict manifestly against evidence, the Court may send them back to reconsider it, before it is recorded, but not afterwards. This, however, is very unusual.

It is said that a jury may ground their verdict on their own knowledge of the facts of the case; but this doctrine appears questionable, as it seems to be contrary to these words in the juror's oath, "and a true verdict give *according to the evidence.*"

PLEA PUIS DARREIN CONTINUANCE.

If any matter of defence arise after the defendant has pleaded, and before the verdict, the defendant may avail himself of it by a plea, termed a "plea *puis darrein continuance.*" Thus, if, after plea, the plaintiff give the defendant a release, the latter may plead the release *puis darrein continuance.* Or, if the plaintiff or defendant have become bankrupt, &c. the bankruptcy may be pleaded *puis darrein continuance.* So, where an action of ejectment was brought, and, after issue joined, the lessor of the plaintiff entered into part of the premises, the Court held that the defendant might plead this matter *puis darrein continuance;* and an award made in the cause, after issue joined, could not be given in evidence under the original pleadings, but should have been pleaded *puis darrein continuance.* In an action against an executor, the defendant may plead a judgment recovered against him *puis darrein continuance;* but the defendant cannot plead a release by one of the lessors of the plaintiff in ejectment.

If the matter of defence have arisen *before* the return of the *venire*, it should be pleaded in bank, and before any subsequent step is taken in the cause, and be engrossed on plain paper, and filed with the clerk of the papers, in the same manner as other special pleas.

But if the matter of defence have arisen *after* the return of the *venire*, then the defendant should plead it *puis darrein continuance* at *Nisi Prius* or the assizes, when the cause is called on, or at any time before the jury have actually delivered their verdict. The plea may be put in at *Nisi Prius* upon paper, and it is the duty of the attorney afterwards to transcribe it on the *Nisi Prius* record.

The defendant cannot twice plead *puis darrein continuance.*

If pleaded at the assizes, it is said the plea cannot be amended after the assizes; although, when pleaded in

bank, the Court have allowed it to be amended, upon the terms of the defendant taking short notice of trial.

By pleading *puis darrein continuance* you waive your former pleading; and the cause then stands in the same state as if this had been the plea originally put in.

If this plea be put in at the assizes, or at *Nisi Prius*, no further proceedings can be had on it there; but it must be certified on the back of the record at *Nisi Prius*, and returned to the Court above. And if one of the two defendants plead a plea of bankruptcy, *puis darrein continuance*, the plaintiff cannot, at *Nisi Prius*, confess this plea to be true, and go on with the case as to the other defendant. After the record is thus returned, the plaintiff may reply or demur to the plea, and then proceed as in ordinary cases.

THE JURY.

All persons, possessing the property necessary by law to qualify them to serve on juries, may be jurors: except aliens, persons attainted of treason, or felony, or of any crime that is infamous, unless they have obtained a pardon; or persons under outlawry or excommunication.

But many are exempt from serving, *viz.* peers; judges; clergymen in holy orders; qualified Roman Catholic clergymen; qualified protestant dissenting clergymen; serjeants and barristers-at-law, actually practising: doctors and advocates of the civil law, actually practising; attorneys and proctors duly admitted, and actually practising in the courts of law or equity, or in the ecclesiastical or admiralty courts, who have taken out their annual certificates; officers in any of these courts, actually executing the duties of their offices; coroners; gaolers and keepers of houses of correction; members and licenciates of the royal college of physicians in London, actually practising; surgeons who are members of one of the royal colleges of surgeons in London, Edinburgh, or Dublin, and actually practising; apothecaries certificated by the court of examiners of the apothecaries' company, and actually practising: officers of the navy or army on full pay; pilots licensed by the Trinity-house of Deptford, Hull, or Newcastle; masters of ships in the buoy and light service; and pilots licensed by the lord warden of the cinque ports or under any act of parliament, or charter in any other port; the household servants of his majesty; officers of the custom or excise; sheriff's officers, high constables and parish

clerks. In Middlesex, no person shall be returned who has served in either of the two preceding terms or vacations; and no person shall be returned to serve on a jury at the assizes, who has before served on a jury, in Yorkshire within four years, in Wales or in the counties of Hereford, Cambridge, Huntingdon or Rutland, within one year, or in any other county within two years, having the sheriff's certificate of having so served; which certificate the sheriff is bound to give to every common juror serving or attending as such, but not to grand or special jurors.

Every man, between the ages of twenty-one years and sixty, who has within the county in which he resides, in his own name or in trust for him, £10 by the year above reprizes in lands or tenements, of freehold, copyhold, or customary tenure, or of ancient demesne, or in rents issuing out of such lands or tenements, or in lands, tenements and rents taken together, in fee simple, fee tail, or for the life of himself or some other person,—*or* who shall have, within the same county, £20 by the year above reprizes in lands or tenements held by lease for twenty-one years or longer, or for a term of years determinable on any life or lives,—*or* who, being a householder, shall be rated or assessed to the poor-rate, or to the inhabited house duty, in Middlesex on a value of not less than £30, or in any other county on a value of not less than £20,—*or* who shall occupy a house containing not less than fifteen windows,—is qualified and liable to serve on juries.

In London, a juror must be a householder, *or* the occupier of a shop, warehouse, counting-house, chambers, or office, for the purpose of trade or commerce, within the said city, *and* have lands, tenements or personal estate of the value of £100.

Special jurors are all those described in the jurors' book as esquires or persons of higher degree, or as bankers or merchants, and the sheriff or under-sheriff is to set down their names in alphabetical order, in a list to be called "the special jurors' list," and prefix to each name a number; which numbers are also to be written on distinct pieces of parchment or card, and put into a drawer or box, to be kept for the purpose of nominating special juries.

Upon writs of inquiry executed in London, or in any county in England or Wales, the jurors must be qualified in like manner as jurors at *Nisi Prius* in the same city, county, &c.; but if executed in any liberty, franchise, city, borough, or town corporate, not being a county, or in any city, borough or town being a county of itself, the jurors may

be of the same description as was usual before the passing of this act.

If any man, summoned to attend on a jury, shall not attend, on being thrice called, the Court may set such fine upon him as it shall think meet, unless some reasonable excuse shall be proved by oath or affidavit; and upon such default on a writ of inquiry, the under-sheriff, &c. may set a fine not exceeding £5.

When a full jury appear, either party may challenge them for cause.

Challenges are of two kinds: to the array, or to the polls.

A challenge to the *array*, is an objection to all the jurors returned by the sheriff, collectively, not for any defect in them, but for some partiality or default in the sheriff, or his under officer, who arrayed the panel. This is either a principal challenge, or a challenge to the favour.

The causes of principal challenge to the array are, that the sheriff, or other returning officer, is of kindred to the plaintiff or defendant; that some of the jury are returned at the nomination of the plaintiff or defendant; that an action of battery is pending at the suit of the plaintiff or defendant against the sheriff, or at the suit of the sheriff against the plaintiff or defendant; that an action of debt is pending at the suit of the plaintiff or defendant against the sheriff, but not if by the sheriff against the plaintiff or defendant; that the sheriff, or returning officer, holds land depending upon the same title with that in litigation between the parties; that the sheriff, &c. is under the distress of the plaintiff or defendant; that the sheriff, &c. is counsel, attorney, officer, servant, or gossip of either party; or is an arbitrator in the same matter, and has treated thereof. Formerly, where a peer was a party, the array might be challenged, if a knight were not returned of the jury; but this has been expressly altered by stat. 6 Geo. IV. c. 50, s. 28: nor shall any challenge be now allowed for want of hundreders.

The causes of challenge to the array for favour, are such as imply a *probability* of bias or partiality in the sheriff, but do not amount to a principal challenge. Thus, that the plaintiff or defendant is tenant to the sheriff; or that the son of the sheriff has married the daughter of the plaintiff or defendant: or the like.

But these challenges must be understood as referring only to *common* juries; for it seems very doubtful if the array in special jury cases can be challenged. Nor, indeed, are

challenges to the array usual in common jury cases; for if there be an objection to the sheriff, you may have the *venire* directed to the coroner; and, beside, the objection would be a good ground for arresting the judgment.

A challenge to the polls is an exception to one or more of the jurors who have appeared, individually; and this is either a principal challenge, or a challenge to the favour.

There are various grounds for these challenges, such as want of qualification, interest, &c. but the general rule of law is, that the juror shall be indifferent; and if it appear probable that he is not so, this may be made the subject of challenge, either principal or to the favour, according to the degree of probability of his being biassed. The cause of a principal challenge to the polls, is such matter as carries with it, *prima facie*, evident marks of suspicion either of malice or favour. But when, from circumstances, it appears probable, that a juror may be biassed in favour of or against either party, and yet such circumstances do not amount to matter for a principal challenge, it may then be made a challenge to the favour. The effect of these two species of challenge is the same; the only difference between them is the mode of trying them.

No challenge can be made, before a full jury has appeared. Either party may challenge first; but the party who first begins to challenge must finish all his challenges before the other begins; and the parties who are challenged first, are first tried.

The challenge to the polls is on *ore tenus*; and it is not in general required that the party challenging shall immediately declare his cause of challenge, unless there be not a sufficient number of jurors remaining on the panel.

The challenge to the array must be in writing. It may be in the following form:—

"And now at this day, to wit, on , come as well the aforesaid J. S. as the aforesaid J. N. by their respective attorneys; and the jurors of the jury, impanelled, being summoned, also come; and hereupon the said J. N. challengeth the array of the said panel; because he saith that [*here set forth the matter of challenge, with certainty and precision*]. And this he is ready to verify, wherefore he prayeth judgment, and that the said panel may be quashed."

The challenges to the array sometimes are tried by two of the coroners, sometimes by two of the jury; and if the

challenge be a principal challenge, it may be tried by the Court itself.

Challenges to the polls, if to the favour, are thus tried: If two jurors have been already sworn, they shall try the challenge; if not, the Court appoint two indifferent persons, who are thence named triers. If the triers try one juror, and he be found indifferent, he is sworn; and then he and the two triers shall try the next. When another is found indifferent, the two triers shall be superseded, and the two first so sworn on the jury shall try the next. The following oath is previously administered to those who try the challenge:—

"You shall well and truly try whether J. S. [*the juror challenged*] stand indifferent between the parties to this issue: so help you God."

But where the challenge to the polls is a principal challenge, it is tried by the Court, without the aid or intervention of triers. And, indeed, in both cases, of principal challenge and challenge to the favour, the associate or clerk of *Nisi Prius*, upon your intimating to him an objection to any particular person in the panel, will in general refrain from calling him.

The juror himself may be examined as to the matter of challenge, provided it do not tend to his dishonour or discredit.

After the challenge is decided, if the juror be found indifferent, he is immediately sworn on the jury; if otherwise, he is desired to quit the jury-box, and the officer proceeds to swear the next juror, if not challenged. If a juror be challenged and rejected, he cannot afterwards be sworn as a talesman.

DEMURRER TO EVIDENCE, AND BILL OF EXCEPTIONS.

The demurrer is not now so much in use as formerly; for the effect of it may, in general, be obtained upon motion for a new trial.

A demurrer admits all the facts proved, but alleges that they are not sufficient to maintain the issue. The Court, upon a trial at bar, or the judge at *Nisi Prius*, are bound

to receive it, if tendered; and if they do not, it is a good ground for a bill of exceptions. If they admit it, the associate is usually ordered to take a note of the testimony, which is immediately signed by the counsel on both sides; and the demurrer being afterwards drawn up in form from it, and engrossed, is tacked to the *postea*, and remitted to the Court above.

Upon the demurrer being allowed, the jury may proceed to assess the damages conditionally; or, afterwards, if judgment be given for the plaintiff on the demurrer, they may be assessed by another jury, upon a writ of inquiry.

Upon a demurrer to evidence, if the evidence be matter of record or other written evidence, the opposite party *must* join in demurrer; and the same in the case of parol evidence, provided it be certain and positive.

If a judge, at the trial, either in his direction or decision, mistake the law, the counsel on either side may require him to seal a bill of exceptions. On a bill of exceptions, the case always goes to the jury.

The bill of exceptions must be tendered at the trial. Like the demurrer to evidence, the substance must be reduced to writing at the time the objection is made, although it need not then be drawn up in form. If the exceptions be truly stated in the bill, the judge should affix his seal to it; but otherwise, if the bill contain matters false or erroneously stated, or matters wherein the party was not overruled. If the judge refuse to sign the bill, the party grieved may have a writ upon stat. Westm. 2d. (13 Edw. 1) c. 31, reciting the form of the exception taken and overruled, and commanding "*quod si ita est, tunc sigilla vestra apponatis;*" and if the writ be returned, "*quod non ita est,*" the party may have an action against the judge for the false return. If the bill be sealed, both parties are concluded by it as to the truth of the matters contained in it, and the adverse party cannot afterwards aver the contrary, or even supply an omission in it.

If the bill of exceptions be not tacked to the record, it is necessary that the whole record should be set forth in it; but if tacked to the record, it then merely states the proceedings after issue joined, and the exceptions.

As soon as the bill of exceptions is completed, and judgment has been given upon the verdict, &c. the mode of proceeding is by bringing a writ of error on the judgment, and having the matter determined in a court of error.

Upon the return of the writ of error, the judge is called upon to confess or deny his seal; and if he confess it, the proceedings are then entered upon record, and the party assigns his errors.

The judgment on the writ of error is, that the former judgment be either affirmed or reversed. If reversed, a *venire de novo* issues, which must be returnable in the Court where the record is, although the judgment may have been given in the Common Pleas.

Although the regular mode of proceeding upon a bill of exceptions is by writ of error; yet the Court, in order to prevent delay and expense, will, in general, before judgment, give you the effect of a writ of error, upon a motion for a new trial. But where a bill of exceptions has been tendered, you cannot obtain a rule for a new trial, without first abandoning the bill of exceptions.

NONSUIT.

Upon being nonsuited, the plaintiff is liable to costs, in the same manner as if the defendant had obtained a verdict.

If the judge at *Nisi Prius* nonsuit the plaintiff through mistake, the Court, upon application, will set aside the nonsuit. But the Court will not set aside a nonsuit voluntarily suffered by the plaintiff, in order to let him in to plead *de novo;* nor will they set it aside, it should seem, on the ground that the case ought to have been submitted to the jury, unless this were desired on the part of the plaintiff at the trial of the cause. The Court, however, as a matter of indulgence, will, in some cases, set aside a nonsuit upon payment of costs, and a peremptory undertaking to try at the next sittings or assizes, whether the plaintiff has been nonsuited on account of the non-attendance of his witnesses, or the like. If set aside upon payment of costs, such payment is a condition precedent to the setting aside of the nonsuit; and until it be made, the plaintiff cannot proceed to another trial.

VERDICT.

The verdict is either general or special. The jury may undoubtedly, in all cases, give a general verdict, thus taking upon themselves to judge of both the law and the

fact. Or they may give a special verdict; that is, they may find the facts of the case specially, leaving to the Court the application of the law to the facts thus found. Or they may find a general verdict, subject to a special case.

A general verdict is given *viva voce* by the jury thus: "We find for the plaintiff, damages [£20], costs 40*s*.;" or, if for the defendant, then merely "We find for the defendant." If there be several counts in the declaration, and they find for the plaintiff on some, and for the defendant on the rest, the verdict is then given thus: "We find for the plaintiff on the first, second, and fourth, issues, damages [£20], costs 40*s*.; and for the defendant on the third, fifth, and sixth issues." In replevin, however, if the jury find for the defendant, they must find damages and costs, as in other cases where they find for the plaintiff. This verdict is afterwards entered in form, in what is termed the *postea*, indorsed upon the *Nisi Prius record*.

A verdict must comprehend the whole issue or issues submitted to the jury in that particular cause; otherwise the judgment founded on it may be reversed.

A special verdict must state the facts proved at the trial, and not merely the evidence given to prove these facts; otherwise the verdict will be insufficient, and the Court will award a *venire de novo*. But deeds should not be set out in it, in *hæc verba*, but merely the substance of them stated, unless the question in dispute rest on their construction.

The special verdict is often dictated by the Court at the trial, and signed by counsel on both sides, before the jury are discharged. If, in settling it, any difference of opinion arise about a fact, the opinion of the jury is taken, and the fact is stated accordingly.

Let the plaintiff's attorney get the special verdict drawn, from the minutes taken at the trial, and get it settled and signed by counsel; then deliver it to the attorney of the defendant, who, after getting it settled and signed by his counsel, will re-deliver it to you. If the counsel differ in the mode of settling it, the judge who tried the cause, being attended by the parties and their counsel, upon summons, will settle it according to his notes. When settled, leave it with the clerk of *Nisi Prius*, if in a town cause, or with the associate if in a country cause, and he will make out a copy of it for each party. Enter the proceedings on the roll, to the entry of the special verdict inclusive, and docket and file it of record. Make out a

motion-paper for a *concilium*, and get it signed by counsel; take it to the clerk of the rules, and draw up the rule; pay him 6*s.* 6*d.*; carry this rule to the office of the clerk of the papers, and he will enter the cause for argument; serve a copy of it on the defendant's attorney. And lastly, copies of the proceedings must be made out upon unstamped paper, and one delivered to each of the judges; by the plaintiff, to the chief justice and the senior judge; by the defendant, to the two remaining judges. The cause must be set down for argument within four days after the day in bank, unless the Court, upon a proper application grounded on affidavits, think proper to enlarge the time. And the paper books, or copies of the proceedings abovementioned, in causes entered for argument on Tuesdays, shall be delivered to the chief and three puisne judges sitting in the higher Court, on the Saturday preceding; and in those entered for Fridays, on the Tuesday preceding; and the exceptions intended to be insisted upon in argument must be inserted in the margin. If the paper books be not delivered, the cause will be struck out of the paper. But if either party neglect to deliver the books, the other may deliver all, and be allowed for them in costs, and may then move for judgment without argument.

The cause will be called on for argument in the order in which it stands in the paper. The plaintiff's counsel then states the pleadings shortly, and the special verdict at length, and then argues the case. The defendant's counsel is next heard in answer; and lastly, the plaintiff's counsel is heard in reply. Only one counsel on each side can be heard. The Court then deliver their judgment. If the judges coincide in opinion, they deliver their opinions in the order of their precedence; but if they differ, then they deliver their opinions in an inverse order, namely, the junior puisne judge first, then the second puisne judge, then the senior puisne judge, and lastly the chief justice.

It is a settled rule that the Court will intend nothing in a special verdict but what is found by the jury; therefore, where a verdict found a recovery, the Court would not presume a writ of seisin executed, although the recovery would be ineffectual without it. Yet with this exception, the Court will, in general, construe a special verdict in such a manner as to give effect to it, if possible. Therefore, where a special verdict stated that the defendant by his deed "*granted*" to the plaintiff the property in question, in a case where a *release* would have been the

only effective conveyance, the Court construed the special verdict as if it stated a release; although it would have been otherwise, had the point arisen upon the construction of pleadings.

After the Court have decided the case, the party in whose favour the decision is, may immediately sign judgment, tax his costs, and sue out execution, without giving any rule for judgment.

Where a difficulty in point of law arises, the jury may, instead of finding a special verdict, find a general verdict for the plaintiff, subject to the opinion of the judge, or the Court above, on a special case stated by the counsel on both sides with regard to the matter of law; which has this advantage of a special verdict, that it is attended with much less expense, and obtains a much speedier decision; but the parties are hereby precluded from the benefit of a writ of error, if dissatisfied with the judgment of the Court or judge.

The special case is not entered upon record. It must be entered for argument with the clerk of the papers, within the first four days of the term next after the trial at which such special case shall have been reserved; and shall not be set down for argument on any of the last four days of term. In other respects the proceeding is the same as upon a special verdict.

The case must be argued in the order in which it stands on the paper, unless sufficient cause to the contrary be shewn on affidavit, two days at least previously to the day of argument. In arguing it, counsel will not be allowed to state any extrinsic matter; but the Court must judge of the case as it is stated. If misstated, the parties may have leave to amend it.

The *postea* is stayed in the hands of the clerk of *Nisi Prius* or associate, until the question is argued and determined; after which, a general verdict is entered for the prevailing party.

Damages.

In real actions, no damages are recoverable. In mixed actions, damages are recoverable, either at common law, or by virtue of some particular statute. Damages are also recoverable in all personal actions, with the exception of actions upon statutes by common informers for penalties.

In most cases, damages are the sole object of the actions; in some, they are merely nominal.

In *assumpsit*, *covenant*, *case*, *trover*, and *trespass*, damages are the sole object of the action.

In *debt*, the damages are, in general, merely nominal, the recovery of the debt itself being the principal object of the action. In this case, the jury first find the matter of the issue; as, upon *nil debet*, that the defendant owes to the plaintiff the amount of the debt proved; upon *non est factum*, that the writing obligatory, &c. is the deed of the defendant; upon *solvit ad diem*, that the defendant did not pay, &c. &c.; and then they assess nominal damages (usually one shilling) for the detention of the debt. But in debt on articles of agreement, for a penalty, or on bonds conditioned for the performance of covenants or agreements, such as a bond for the performance of covenants contained in the same or in any other deed or writing, or for the payment of money by instalments, or for the payment of an annuity, or for the performance of an award, or for the performance of any other specific act (not being a bond for the payment of a sum of money in gross, at a certain time, as *post obit* bonds, &c., or bond for the payment of money provided for by the 9 Anne, c. 16, s. 13,) or a *replevin* bond, or a bail bond, or the bond of a petitioning creditor, and where in pursuance of 8 and 9 Wm. III. c. 11, s. 8, one or more breaches of the condition are assigned upon record, the jury first assess nominal damages for the detention of the debt, as above mentioned, and then assess actual damages upon the breaches assigned. In actions of debt upon records, the damages are only nominal; excepting in debt on an inland judgment, where interest may be recovered in the way of damages for the detention of the debt; and in some cases it has been allowed in an action on a foreign judgment, as for instance in an action on an Irish judgment on a bond, interest has been allowed beyond the penalty. In debt on a recognizance of bail, they are not liable to interest on the sum recovered subsequent to the judgment. In debt on statute by an informer for a penalty, no damages whatever can be given; but the verdict, after finding the debt, immediately passes on to the assessment of the costs. But in debt, for a penalty on a statute by a party grieved, damages are, in general, recoverable.

In *detinue*, the damages are merely nominal; but the jury find the value of the articles detained; and the judgment is, that the plaintiff recover the articles or their value, together with the damages and costs found by the verdict, and the costs of increase.

In *replevin*, a verdict for the plaintiff gives damages precisely as in trespass; if the action be in *detinet* (which is not a very usual form), these damages are calculated upon the value of the things taken, and the injury the plaintiff has sustained by the taking: if in the *detinuit* (which is the usual form), the damages are given for the injury the plaintiff has sustained by the taking only. If the verdict be for the defendant, damages are given as in a verdict for a plaintiff in trespass.

In *ejectment*, the damages are (unless the lessor of the plaintiff proceed under the 1 Geo. IV. c. 87,) but nominal; the damage really sustained by the lessor of the plaintiff, by the detention of the property in dispute, &c. being now usually recovered in a separate action of trespass for mesne profits.

Where the defendants in trespass join in pleading, the jury, if they find them jointly guilty, cannot sever the damages. But they may find one of them guilty of the trespass at one time, and the other at another; or one of them guilty of part of the trespass or trover, and the other of another; or some guilty of the whole trespass, and the others guilty of part only; in all which cases the jury may assess several damages. Also, where the defendants plead severally, if they be found guilty of the same act of trespass, the jury cannot sever the damages; but the jury who try the first issue shall assess damages against all; and there shall be a *cesset executio* until the other issues are tried, when the other defendants, if found guilty, shall be contributory to those damages. Where the jury sever the damages by mistake, the plaintiff may cure the defect by taking judgment *de melioribus damnis* against one, and entering a *nolle prosequi* as to the other; or, by entering a *remittitur* as to the lesser damages, he may have judgment for the greater damages against both.

Where the plaintiff has judgment for damages against several defendants, he may levy the whole upon any one of them: and such defendant, if the action were *ex contractu*, may, after paying these damages, maintain an action against the other defendants, and oblige them to contribute their respective shares; but if the action were *ex delicto*, he cannot oblige the others to contribute, and is altogether without remedy. In a late case, however, it was held, that, if a party recover damages in case, against one of two joint coach-proprietors, for an injury sustained by the negligence of their servants, such proprietor may maintain an action againt his co-proprietor for

contribution, on proving that he was not personally present when the accident happened.

When the declaration contains *several counts*, the jury may assess either entire damages upon all or any of the counts, or several damages upon each. But it is a settled rule, that if a verdict be entered generally on all the counts, and entire damages given, and one count be bad, it is fatal, and judgment shall be arrested; and it shall be arrested *in toto*, and no *venire de novo* awarded.

In actions for words, if the words be set forth in one count, and some of them be actionable and others not, entire damages may be given; for it shall be intended that the damages were given for the words which are actionable, and that the others were inserted only for aggravation. But if the declaration consist of several counts, and all the words in any of them be not actionable, and if special damage be not laid, or, if laid, not proved, then, if a general verdict be given on all the counts, and entire damages given, it will be bad, and the defendant may either move in arrest of judgment, or bring a writ of error.

Where a declaration in trespass contained two counts, and the defendant pleaded to one, and suffered judgment by default on the other, and, on the trial of the former, the plaintiff could only prove one act of trespass, which was covered by the second count, the Court held that he was not entitled to a verdict on the first count.

Where there is a penalty expressed for the non-performance of a contract, and it is evident such penalty is the precise sum fixed and agreed upon between the parties as liquidated damages for the non-performance of the contract, the jury are confined to that sum; as in an action on a bond for £1000, conditioned that the defendant should marry the plaintiff; the Court held that if the jury found a verdict for the plaintiff, the jury could not give more or less damages than the £1000. But where it does not appear clear that the parties intended the sum stated in the agreement, as liquidated damages, it must then be deemed a mere penalty; in which case, although the jury cannot exceed that sum, yet they may find a less sum, as the measure of the damage the plaintiff has sustained. Therefore, in an action upon an agreement to serve the plaintiff in a certain capacity for four years, under the penalty of £50, the Court held that the jury could not give damages beyond the penalty, but within that sum they might give the party any compensation to which he could

prove himself entitled. In debt, against a sheriff or gaoler for the escape of a prisoner in execution, the jury cannot give a less sum than the creditor would have recovered against the prisoner, *viz.* the sum indorsed on the writ, with the legal fees and expenses of the execution. In trover by the assignees of a bankrupt against the sheriff, to try the validity of a sale under an execution, the jury may, and often do, consider the sum at which the goods were actually sold, after deducting the expenses of sale, as a fair measure of damages. In all other cases, the jury are at liberty to give what damages they may think proper, proportioned to the degree of injury they may judge the plaintiff to have sustained from the tort or breach of contract complained of. And in an action for seduction, in ascertaining the damages, they are not obliged to confine themselves to such a sum as would be a sufficient compensation for the mere loss of service complained of; but they may also allow damages for the injury sustained by the daughter in her reputation and prospects in life, by the seduction. On the other hand, it is a general rule that the jury cannot take into consideration, in mitigation of damages, any fact or circumstance not pleaded as a defence to the action.

In actions against persons for having seized goods, &c. by virtue of any law relating to the customs and excise, where the plaintiff obtains a verdict, if the judge who tries the cause certify that there was probable ground for the seizure, the plaintiff, besides the thing seized, or the value thereof. shall not be entitled to more than 2*d*. damages, nor to any costs of suit.

Also, in actions against justices of peace, on account of any conviction made by them, or for anything done by them, or by them commanded to be done for the levying of any penalty, apprehending of any party, or in the carrying of any such conviction into effect, the plaintiff shall not recover more than 2*d*. damages, (over and above the amount of any penalty levied upon him, if any levy have been made,) nor any costs of suit whatever, unless it be expressly alleged in the declaration that such acts were done by the defendant without any reasonable and probable cause; nor shall the plaintiff be entitled to recover the amount of any penalty levied, or any damages or costs whatsoever, if it be proved at the trial that he was guilty of the offence for which he was convicted, &c., and that he had undergone no greater punishment than is assigned by law for such offence.

THE POSTEA.

The *postea* is an indorsement on the *Nisi Prius* record, purporting to be the return of the judge before whom the cause is tried, of what has been done. It states the day of trial, before what judge the cause was tried, and also who is, or was, the associate of such judge; the appearance of the parties by their respective attorneys, or their defaults; the summoning and choice of the jury, as originally summoned, or who were *tales*, or taken from amongst the standers-by; the finding of the jury, and the assessment of the damages, with the occasion thereof, and the costs.

At the trial, the associate makes a minute of the verdict or nonsuit on the panel, from which minute this *postea* is afterwards made out. If the cause were tried in London or Middlesex, the associate will deliver the record of *Nisi Prius*, with the *distringas* and panel annexed, to the attorney of the party for whom the verdict was given, or to the defendant's attorney, if the plaintiff were nonsuited: and the attorney must afterwards indorse the *postea* upon it, from the associate's minutes on the panel. But if the cause were tried at the assizes, and the judge do not certify that the party recovering shall be forthwith entitled to execution, the associate will indorse the *postea*, and deliver it, at the commencement of the following term, to the attorney or agent of the party entitled to it, as above mentioned; for which the associate is paid at the trial. £2 18*s*. 6*d*. for a verdict for the plaintiff, £1 18*s*. for a verdict for the defendant; and £2 1*s*. for a nonsuit. But if the judge does so certify in pursuance of that statute, then the associate will immediately deliver the record of *Nisi Prius*, and the attorney will indorse the *postea* on it, as in causes tried in London or Middlesex. The attorney should take the *postea* to the clerk of the *posteas*, and get it marked *deliberatur*, for which pay him 6*d*. This may be done at any time before the costs are taxed.

THE JUDGMENT.

The judgment is the sentence of the law, pronounced by the Court, upon the matter contained in the record: *viz*. in the case of a verdict for the *plaintiff*, the judgment is that he recover his damages and costs, in an action of *assumpsit*, covenant, case, trespass, and *replevin*; or his

debt, damages, and costs, in an action of debt; or his goods, or their value, and damages and costs, in an action of *detinue*, together with the costs of increase;—or if the verdict be for the *defendant*, then that the plaintiff take nothing by his writ, and that the defendant go thereof without day, (that is, free from any responsibility as to the action,) and also that the defendant recover against the plaintiff the costs and charges he has expended in his defence; and in *replevin*, the judgment at common law for the defendant is, also, that he have a return of the goods, or on the statute 17 *Car.* II. *c.* 7, for the arrears of the rent and costs. The judgment as to the *increased* costs is grounded on the statute of Gloucester, 6 *Ed.* I. *c.* 1, *s.* 2; and as to the *damages*, &c. and common costs, it is founded on the verdict.

Formerly, if the cause was tried and a verdict obtained, in vacation, the judgment and execution were, for all cases, delayed by reason of the interval between the terms; for the four-day rule for judgment, (which was, in all cases of a general verdict, necessary to have been entered, and to have expired previously to the judgment), could not have been so entered, until on or after the first day of the term. Also, in the case of a nonsuit in vacation, judgment could not, in any case, have been signed, until on or after the first day of the term. But now, by the 1 *W.* 4, *sess.* 2, *c.* 7, *s.* 2, the judge who tried the cause may, in case of a nonsuit, or of a verdict for either party, certify under his hand, on the back of the record, at any time before the end of the sittings or assizes, that, in his opinion, execution ought to issue forthwith, or at some day to be named in such certificate, and subject, or not, to any condition or qualification; and in case of a verdict for plaintiff, then either for the whole or for any part of the sum found by such verdict; in all which cases a rule for judgment may be given, costs taxed, and judgment signed forthwith, and execution may be issued forthwith, or afterwards, according to the terms of such certificate, on any day in vacation or term; and the *postea*, with such certificate as a part thereof, shall and may be entered of record as of the day on which the judgment shall be signed, although the *distringas juratores*, or *habeas corpora juratorum*, may not be returnable until after such day; provided, that the party entitled to such judgment may, if he think fit, postpone the signing thereof. Sect. 3, enacts, that the judgment may be entered and recorded as the judgment of the Court, although the Court may not be sitting on the day of

signing it. Sect. 4, provides, that the Court may afterwards vacate such judgment, or stay or set aside the execution, or arrest the judgment, or grant a new trial, as justice may appear to require; and thereupon, the party affected by such execution may be restored to all he has lost thereby, in the same way as on the reversal of a judgment by writ of error, or otherwise, as the Court may direct.

An affidavit is not requisite to induce the judge to grant this certificate, though, in some cases, it might be desirable to be prepared with one. In order to induce the judge to refuse the certificate, the party may it seems shew, by affidavit or otherwise, facts which would constitute grounds for a new trial, or for arresting the judgment, or facts which may induce the judge to grant time, or indulgence, as, that the defendant had *bona fide* ground for trying the cause, or that he was misled by others, or that he is, at present, unable to pay the damages, but that if time should be granted, he will be able to raise the money before the next term, or other future day; or that he has property to deposit, which is not immediately convertible into money; or the like.

Before you can sign a judgment under the above act, it seems a rule for judgment must be entered with the clerk of the rules; and the time limited by such rule must have expired. Write a memorandum of the rule upon a slip of paper, take and enter it with the clerk of the rules; pay him 6*d*. The rule expires in four days, exclusive of the day on which it is entered, and inclusive of the last day, unless the last day be a Sunday, Christmas-day, Good-Friday, or a day appointed for a public fast or thanksgiving; in which case, that day would not be reckoned as one of the four.

The practice as to moving the Court to vacate the judgment, or stay or set aside the execution, or arrest the judgment, or grant a new trial, is the same as in all other cases.

Formerly, when a general verdict was given, the party for whom it was given must, in the King's Bench, on or after the day in bank, that is, on or after the return day of the *distringas*, (where the trial was at the sittings in term), or on or after the first day of the next term, (if tried in the vacation), have entered a rule for judgment *nisi causa* with the clerk of the rules, and waited the four days limited before he could sign final judgment. This rule was also necessary after the execution of a writ of inquiry,

either on a demurrer or a judgment by default, or where a general verdict was given subject to an award. But it was not required after a special verdict, where the prevailing party might, as now, proceed to sign judgment, tax his costs, and sue out execution, immediately after the decision of the Court, without any rule for judgment; nor was it ever necessary after a nonsuit, for the judgment might, as now, be signed immediately after the day in bank. And now by the late rule of Court of Hilary Term, 2 Wm. IV. r. 67, after a *verdict* or *nonsuit*, judgment may be signed on the day after the appearance day (*i. e.* the fourth day after the return day) of the *distringas*, without any rule of judgment; also after the return of *a writ of inquiry*, judgment may be signed at the expiration of four days from such return, without such rule.

At any time within the four days after the day in bank, that is to say, within the first four law-days on which the Court actually sit, after the return day of the *distringas*, if there be so many in term, and if not, then on or before the last day of the term, the party against whom the verdict is given may move for a new trial; and if that be refused, he may then move an arrest of judgment, within four days after the trial, if there be so many days in the term, and at all events within the term in which the *distringas* is returnable; but if he do not so move, or if he move and a new trial be refused, or judgment be not arrested, the prevailing party may, at any time after the fourth day, sign judgment, tax his costs, and proceed to sue out execution.

The party entitled to the judgment may postpone the signing it as long as he pleases. It is not necessary even to give a term's notice previous to signing the judgment where four terms or more have elapsed since the trial; the rule requiring a term's notice applying only to cases where the matter is still in controversy, and where the plaintiff's neglect to proceed in the cause has occurred before verdict. But in order to enter up judgment on an old warrant of attorney, leave of the Court is sometimes requisite.

On or after the appearance day of the return of the *distringas*, if the judge does *not* certify for immediate execution, under the 1 Wm. IV. c. 7, or, after entering the rule for judgment, and after the expiration of the four days as above named, if the judge *does* so certify, get the record of *Nisi Prius* from the associate, and enter the *postea* on it, in a *town* cause. *Or*, in a *country* cause,

the associate will enter the *postea* before he gives you the record, as already mentioned; unless, perhaps, where the judge certifies that you are entitled to immediate execution under the statute 4 Wm. IV. sess. 2, c. 7, above noticed, in which case the associate will immediately deliver the record, and you will enter the *postea* on it. Take it to the clerk of the posteas, who will mark it "deliberatur;" pay him 6*d*. Formerly, the attorney was obliged to get the *postea* marked within two days after he received it; but this rule is not observed at present, and it is usually marked any time before the costs are taxed. Having thus got the postea marked, take it, together with all the papers and briefs, &c. in the cause, to the master, who will tax the costs and sign judgment. The master cannot be compelled to attend and tax costs, in cases where the judge certifies under the above stat. of 1 Wm. IV. for immediate judgment, &c. at any time between the last day of August and the 21st of October.

The master will tax the costs, upon a view of the proceedings. But if there be extra expenses incurred, which do not appear upon the face of the proceedings, such as witnesses' expenses, fees to counsel, attendances, court fees, &c. an affidavit must be made of these extra costs, otherwise the master will not be warranted in allowing them.

The following are the forms of the necessary affidavits in such cases, at the assizes and in town causes.

Affidavit of Increased Costs in a Special Jury Cause at Assizes.

In the King's Bench, [*or* Common Pleas, *or* Exch. of Pleas.]

Between A. B. plaintiff, and C. D. defendant.

P. A. of gentleman, attorney for the abovenamed [plaintiff,] and A. B. of , the abovenamed [plaintiff,] severally make oath and say; and first, this deponent P. A. for himself saith, that notice of trial was given in this cause for the last assizes to be holden at [*name of assize town,*] in the county of , and that the same was tried before a [special] jury of the said county; and that he did cause subpœnas to be issued out, on the part of the said plaintiff: and that W. W. of T. W. of , &c. [*names and additions of witnesses,*] were all of them severally subpœnaed on the part of the plaintiff. And this deponent further saith, that all the said witnesses were material and necessary for the said plaintiff; and that their places of residence are distant from this deponent's

residence miles; and that the said W. W., T. W., &c. [*names of the witnesses,*] were paid with their pubpœnas the sum of one shilling each. And this deponent further saith, that the usual place of his abode is distant from [*assize town*] aforesaid, miles; and that he this deponent was necessarily absent from his place of abode, in going to, staying at, and returning from the assizes, days; and that he did pay for conveying himself to and from aforesaid, and for his expenses on the road, the sum of £ . And this deponent further saith, that the usual place of abode of the said W. W. is distant from [*assize town*] aforesaid, miles; and that the usual place of abode of the said T. W. is distant from aforesaid, miles; [*mentioning each of the witnesses in the same manner,*] and that the said W. W., T. W., &c. were necessarily absent from their respective places of abode, in going to, staying at, and returning from the said assizes, days. And this deponent further saith, that he did also pay to the said W. W., T. W., &c. for their loss of time, trouble and expenses, the sum of £ : And this deponent further saith, that his brief consisted of sheets of paper; and that he did pay to Mr. , with his brief, and his clerk, £ , and to Mr. [illegible] brief, and his clerk, £ , and also the following court fees: to the marshal, for entering the cause, , to the jury, tipstaff, and bailiff, , to the marshal and crier , and to the associate . And this deponent P. A. for himself saith, that he did pay for the expenses of himself and witnesses, at the said assizes, the sum of £ .

P. A.
A. B.

Sworn, &c.

The like, in a Town Cause tried by a Common Jury.

In the King's Bench, [*or* Common Pleas, *or* Exch. of Pleas.]

Between A. B. plaintiff, and C. D. defendant.

A. A. of , gent. agent for the abovenamed plaintiff, and A. P. of , in the county of , gent. attorney for the abovenamed plaintiff, severally make oath and say; and first, this deponent A. A. for himself saith, that the above cause was set down to be heard, and notice of trial given for the sittings in Term, 1833, and that the same was from time to time made a

remanet. That the said cause was in the paper and ready for trial at the adjourned sittings after Term last past, in and for the Guildhall of the city of London [*if the cause was a special jury one, state the fact, as in the preceding form*]. And this deponent A. P. for himself saith, that he caused four subpoenas to be issued out on behalf of the said plaintiff; and that T. W. of Liverpool, merchant; J. J. of , gent.; J. M. of , clerk; R. C. of , merchant; and M. A. of , aforesaid, sugar broker; were severally subpoenaed on the part and behalf of the said plaintiff. That this deponent, whose place of residence is distant from the city of London miles, attended the trial of this cause as a necessary and material witness. And this deponent further saith, that , the usual place of abode of the said T. W., is distant from London miles; that the usual place of abode of the said J. M. is distant from London miles; and that , the usual place of abode of the said R. C. and M. A. is distant from London miles. And this deponent further saith, that the said several witnesses were all material and necessary witnesses in this cause, on behalf of the said plaintiff; and that it would not have been safe or prudent for the above cause to have been carried down for trial without their evidence; and that they and he, this deponent, attended for the purpose of being witnesses at the trial of this cause, and that they and he were witnesses in no other cause, as this deponent verily believes. And this deponent further saith, that he set out from , in the county of , his usual place of abode, and attended in London for the purpose of superintending the trial of this cause, and as a material witness for and on behalf of the plaintiff as before said. And this defendant further saith, that the adjournment day for the trial of common jury causes in and for the city of London, was fixed for Thursday, the day last; and the said several witnesses were subpoenaed for that day; and that subsequently the said adjournment day was postponed by the order of the lord chief justice of this honourable court, to the day of last; and that the abovementioned cause was second in the paper of that day. That in consequence of the probability of the cause being called on early in the morning of the said day of , it was necessary and expedient for all of the abovementioned witnesses to be in London on the day of , and they were requested by letter to be there accordingly. And this deponent

P. A. for himself saith, that a short time before this cause would have been tried (and after the witnesses were subpœnaed and every preparation for trial made,) *viz.* on the evening of the day of the same month of , he was served with a copy of a summons by the defendant's attorneys to show cause why the defendant should not be at liberty to withdraw his pleas pleaded, and suffer judgment to go by default for £ , with interest, as therein mentioned. That this deponent did accordingly on the next day, *viz.* the day of the said month of , attend before the honourable Mr. Justice , who ordered that he, the said defendant, should be at liberty to withdraw his pleas, and that judgment should go against him by default. And this deponent P. A. for himself saith, that, immediately upon such order being made, he did write letters, and sent them by the next post to the said several witnesses above subpœnaed, for the purpose of preventing their attendance, and requesting them not to attend upon such subpœnas; but that such letters did not reach their destination in time to prevent either of the said witnesses attending. And this deponent further saith, that he had no means of preventing them so attending. That immediately after the above order was made, and on the arrival of the said witnesses, T. W., R. C., and M. A., he, this deponent, communicated to them that their services would be dispensed with, and desired them, with the other witnesses, J. M. and J. J., to return to their respective homes as soon as possible. And this deponent further saith, that the said witness T. W. was necessarily absent in coming from and returning to his said place of abode days; that the said J. J. was necessarily absent in coming from and returning to his said place of abode days; that the said witness J. M. was necessarily absent in coming from and returning to his said place of abode days. That the said witnesses R. C. and M. A. were necessarily absent in coming from and going to their places of abode days; and that this deponent was necessarily absent in coming from and returning to his place of abode, and entering into the necessary negotiation with the defendant's attorneys, days. And this deponent A. A. for himself saith, that he delivered a brief in this cause, consisting of sheets of paper, to Mr. , and paid him therewith guineas, and his clerk shillings; and that he delivered another brief in this cause to Mr. , and paid him therewith guineas, and

his clerk shillings; that he also paid to Mr. a refresher fee of guineas, and his clerk shillings; and to Mr. , for a refresher fee guineas, and his clerk shillings. That in the opinion of this deponent it was necessary and expedient to have a consultation upon the necessary evidence in this cause with the abovementioned counsel previous to the trial of this cause; and that he did have such consultation accordingly, and that he paid a consultation fee of guineas to Mr. , and to his clerk shillings; and also a similar fee of guineas to Mr. , and to his clerk shillings; that he paid to Mr. , special pleader, for advising upon the evidence in this cause, guineas. And this deponent A. A. for himself saith, that the several sums of money following have been paid to and for the said several witnesses, that is to say, the sum of £ to the said T. W.; the sum of £ to the said J. J.; the sum of £ to the said M. A.; and the sum of £ to the said R. C. for their loss of time, trouble, and expenses. And that he, this deponent, has also paid for his travelling expenses the sum of £ , and that he is entitled to the sum of guineas per diem, during the said period of days as aforesaid, making, together with his said travelling expenses, the sum of £ .

Judge's or baron's signature.

Sworn, &c.

If the affidavit be made before a commissioner (as it usually is in country causes), you must, in a reasonable time before taxation, file it with the clerk of the rules, who will make out a copy of it for you, to lay before the master; pay him 8*d*. per sheet. It is usual also, among fair practitioners, to send a copy of it to the opposite attorney.

Before taxing the costs, the prevailing party must give the opposite party one day's previous notice of taxation.

When the costs are taxed, final judgment is then said to be signed; and the prevailing party may immediately proceed to sue out execution.

As far as relates to purchasers *bona fide* for a valuable consideration, a judgment affects the lands, tenements, and hereditaments of the party, only from the time it is signed; to ascertain which, the master, in signing the judgment, must mention on the record the time of signing it; and the same shall be stated in the margin of the judgment roll, when the judgment is entered. (29 Chas.

II. c. 3, s. 13, 14, 15; *extended to the counties palatine by* 8 Geo. I. c. 25, s. 6). But as to all other persons but purchasers, the judgment, (when not signed by leave of the judge under the statute 1 Wm. IV. sess. 2, c. 7,) as it affects lands, relates, it should seem, to the first day of the term of which it is signed, in the same manner as at common law; and it affects, as well lands held in trust for the defendant, as those of which he is actually seised. (29 Chas. II. c. 3, s. 10). But copyhold lands are not bound by it.

As to chattel property, the judgment does not affect it in the hands of the defendant; chattel property being bound only by the delivery of the writ of execution to the sheriff.

As soon as judgment is signed by the master, the party in whose favour it is given may immediately sue out execution, before the judgment is entered on the roll, or docketed. The judgment, however, must be entered on the roll, docketed, and carried to and filed in the treasury of the Court, in order to bind the defendant's lands; to enable the plaintiff to bring debt or *scire facias* on the judgment; to proceed against the bail on their recognizance, in case a writ of error is brought; and in order to bind assets in the hands of the executor or administrator of the defendant. In all other cases, the judgments are ordered to be docketed; and the rolls of Trinity, Michaelmas, and Hilary terms. are ordered to be brought in before the essoign days of the subsequent terms, respectively, and the rolls of Easter term before the first day of Trinity; after which they are not to be received without the special leave of the Court, and the *custos brevium* usually attends two days before every term, to receive and file the rolls which ought to be so carried in. No great attention, however, seems to be paid to these rules, as they are merely directory; and rolls are now received after the time mentioned in them, without the leave of the Court, upon paying a *post terminum* fee of 4*s*. 8*d*. to the officer.

When either party dies after a verdict in vacation, judgment may be entered at common law in that vacation as of the preceding term, and in such case the roll ought to be brought in and filed before the essoign day of the subsequent term. If, however, the judgment be signed in vacation, it should not be entered as of the preceding term. By the 17 Chas. II. c. 8, s. 1, the death of either party between verdict and judgment shall

not be alleged for error, so as such judgment be entered within two terms after such verdict.

A judgment which is not docketed does not affect any lands or tenements, as to purchasers or mortgagees, or have any preference against heirs, executors, or administrators in their administration of the ancestor's, testator's, or intestate's estate. And the clerk of the dockets must docket all judgments entered of Easter and Trinity terms before the last day of Michaelmas term, and those entered of Michaelmas and Hilary terms before the last day of the ensuing terms, respectively, under the penalty of £100. These dockets may be searched and viewed by all persons at reasonable terms, paying for every term's search 4*d.* and no more. Docketing of the *issue* is not a sufficient docketing of a judgment.

The practice as to entering and docketing the judgment is thus:—If you have been ruled to enter the issue, and have already carried in and docketed your roll, then all you have to do is to take the *Nisi Prius* record, with the master's allocatur, to the clerk of the treasury, who will continue the proceedings and enter the judgment on the roll; pay him 2*s.* You must also docket the entry of the judgment, in order to bind the defendant's lands or assets in the hands of his executor or administrator; for which purpose make out a docket paper of the judgment, and take it to the clerk of the judgments, who will enter the docket; pay him 3*s.*

But if, as is more usual, merely an *incipitur* have been entered on the issue roll, at the time of passing the record of *Nisi Prius,* you must enter the issue, &c. on the roll, and then in a new paragraph continue the proceedings to the judgment. After the entry of the judgment, the roll is thenceforward called the "judgment roll." Having thus made your roll, docket your entry and carry in another roll. You must also docket the entry of the judgment, as above mentioned, in order to bind the defendant's lands or assets in the hands of his executor or administrator.

Also, in order to bind lands in Middlesex or Yorkshire, it is necessary to file a memorial of the judgment in the registry office of such counties respectively; before which, the lands shall not be affected or bound by the judgment. For this purpose, engross a memorial of the judgment upon a 10*s.* stamped piece of parchment; and write at the bottom of it a certificate of judgment having been signed. Take this to the master, who, upon seeing the postea and

allocatur, will sign the certificate; pay him 1*s*. Then write an affidavit of the master's having signed the certificate, upon the same parchment (for which purpose the parchment has also a 2*s*. 6*d*. stamp), and swear it before a judge of the court in which the judgment was obtained, or before a master in chancery; pay 1*s*. And, lastly, take the parchment thus containing the memorial, certificate, and affidavit, and file it with the registrar at the registry-office in Bell-yard (if the lands be in Middlesex): pay him 5*s*.

WRIT OF ERROR.

A writ of error is an original writ issuing out of the Court of Chancery, in the nature, as well of a *certiorari* to remove a record from an inferior to a superior court (excepting in the case of error *coram nobis*), as of a commission to the judges of such superior court, to examine the record, and to affirm or reverse the judgment according to law.

It lies, where a person is aggrieved by an error in the foundation, proceeding, judgment, or execution of a suit, provided it be an error in substance, not aided at common law, or by some of the statutes of jeofail. It can be brought only on a judgment, or an award in nature of a judgment, given in a court of record, acting according to the course of common law: but when the Court acts in a summary manner, or in a new course different from the common law, a *certiorari*, and not a writ of error, lies. And if the court, where the judgment is given, be not a court of record, the judgment can be reviewed by a superior court, only by a writ of false judgment. The judgment, however, upon which error is brought, must be final, and not merely interlocutory, but error may be brought on a judgment of nonsuit.

No judgment in any real or personal action shall be reversed or avoided for any error or defect therein, unless the writ of error be brought and prosecuted with effect within twenty years after such judgment signed or entered of record; provided the party against whom the judgment is given be not an infant, femme covert, *non compos mentis*, or in prison or beyond sea; in which cases the writ of error must be brought within twenty years after such disability ceases.

The writ, however, may be brought and bear teste,

even before the judgment is signed; and this is the usual practice, in order to prevent execution. It may be returnable at any time in the term of which the judgment is given.

A writ of error can be brought by him only who was party or privy to the record, or injured by the judgment, and who consequently will derive advantage from its reversal. It may therefore be brought either by the parties themselves, or by their heirs, executors, or administrators. If lands descend to a man by the mother, and he lose them by an erroneous judgment and die, his heir by the mother, not by the father, shall have the writ of error. So the younger son, when entitled to land by the custom of borough English, shall have the writ of error, and not the heir at common law; for this remedy descends with the land. So, if tenant in tail female lose his lands by an erroneous judgment, and die, the writ of error must be brought by the issue female, and not by the son. If tenant in tail lose his estate by an erroneous judgment, and die without issue, the immediate remainder man or reversioner may bring error; and if the remainder man or reversioner were in any manner made a party to the record, he may bring the writ of error even during the life of the tenant in tail. If lessee for life lose his lands by an erroneous judgment, the immediate remainder man or reversioner may bring a writ of error: at common law it could not be brought until after the lessee's death; but by stat. 9 Rich. II. c. 3. it may be brought during the continuance of the estate for life. If there be judgment against the principal, and also against the bail, the principal cannot have error on the judgment against the bail, nor the bail on the judgment against the principal, nor can they join in a writ of error, because the judgments are several, and affect distinct persons.

A writ of error is usually brought by the party against whom the judgment is given; but a plaintiff may bring error to reverse his own judgment, if he be dissatisfied with it, in order that he may be enabled to bring a new action.

Where a judgment is given against several, any of them may bring a writ of error; but it must be in the names of all, otherwise the Court will quash it; for otherwise this inconvenience would ensue, that every defendant might bring a writ of error by himself, and by that means delay the plaintiff from having the benefit of his judgment, though it should be affirmed once or oftener. And

so strict are the Courts in this respect, that although one of the parties may have died, yet he must be named in the writ, and his death stated, though the writ may be brought by the survivors alone. The death in such a case may be alleged in the writ thus:—

"Because in the record and proceedings, and also in the giving of judgment, in a plaint which was in our Court before you and your companions, our justices of the bench, by our writ, between J. N. [*for whom the judgment was given*] and J. S., late of , and G. H. [*those against whom it was given*] which said G. H. is since deceased, &c. to the great damage of the said J. S., who hath survived the said G. H. &c."

If, after error brought by one of several plaintiffs or defendants, in the name of all, the others refuse to come in and join with him in the assignment of errors, they must be summoned and severed; after which he may proceed in the writ of error alone, and the Court will give him time to assign errors, until the others can be summoned and severed. But if, in trespass against three, there be judgment against two of them by default, and the third justifies, and it is found for him, the two against whom judgment was given can alone join in a writ of error; for the other cannot say that the judgment was to his prejudice; and the same if the two had been found guilty by verdict, and the other acquitted. The writ, however, in these cases should describe the record as it really is, including all the parties to it, alleging the error to be the "great damage" of those who bring the writ of error. Also, where an action was brought against two, one of whom was outlawed, and judgment passed against the other, and the latter thereupon brought a writ of error in his own name; an objection being taken that the writ should have been brought in the names of both, the Court overruled it, saying that the writ, as to one of the defendants, was determined by the outlawry. And in all cases where a writ of error is brought by some of several defendants, notwithstanding it may be liable to be quashed on this account, it still has the effect of removing the record, and is a *supersedeas* of execution as to all the defendants.

Where all the parties should have joined, and have not, if the defendant in error proceed without quashing the writ, and the judgment be affirmed, he can sue out execution against those only who were parties to the writ.

And if a party or his attorney enter into any agreement not to bring a writ of error, he is afterwards precluded from bringing it, though there be manifest error in the record; or if he bring it, the Court on motion will order him to *nonpros* it.

You may sue out and prosecute a writ of error by a different attorney from that employed by you in the original action, without obtaining a judge's order to change your attorney.

The writ of error is brought, either in the same Court in which the judgment was given, or to which the record has before been removed by a former writ of error, or in another and a superior Court.

If, upon a judgment in the Court of King's Bench, there be error in the process, or through the default of the clerks, it shall be reversed by writ of error returnable in the same Court. This writ is called *error coram nobis*, because the record and process upon which it is founded are stated in the writ to remain "before us," that is, in the Court of King's Bench; the writ (as with all original writs) running in the king's name.

Where the error is in fact and not in law, a writ of error *coram nobis* lies in the same Court: as where the defendant, being under age, appeared by attorney; but a defendant in ejectment cannot assign this for error. So, where the plaintiff or defendant was a married woman at the commencement of the suit, or died before verdict or interlocutory judgment, or the like.

Also, if a record be removed into this Court by writ of error, and the writ of error be quashed for insufficiency, or for any fault but variance between it and the record, a writ of error *coram nobis* may then be sued out in the King's Bench upon the record so removed; and if this latter writ be also quashed for insufficiency, there may be a second writ of error *coram nobis*. So, if a writ of error in this Court, after the removal of the record, abate, either by the judgment of the Court, or by plea, death, or otherwise, a writ of error *coram nobis* lies here. And if plaintiff in error die pending the writ, and the Court, notwithstanding, proceed to reverse the judgment, the defendant in error may bring error *coram nobis* upon this judgment of reversal, and assign the death of the plaintiff to the former writ as error. But error *coram nobis* does not lie in it, upon a judgment of affirmance given, nor after affirmance in the Exchequer Chamber; nor does it lie in the Exchequer Chamber, after a writ of error from

the King's Bench has abated there, by death or otherwise; a transcript only, and not the record itself, being always removed there; consequently there must be a new writ of error. Also, it may be observed, that no writ of error, for error in fact, can be brought either in the Exchequer Chamber or House of Lords.

But if the error be in the judgment itself, and not in the process, a writ of error does not lie in the same Court, but must be brought in another and superior Court.

From the King's Bench a writ of error at common law formerly lay in all cases immediately to the House of Lords, whether upon judgments in causes originally commenced in the King's Bench, or brought there by writ of error. But now a writ of error upon any judgment (not being the reversal or affirmance of the judgment of an inferior Court, and not being a case in which the king is a party), given by the King's Bench, must be made returnable before the judges of the Common Pleas, and the barons of the Exchequer in the Exchequer Chamber; and from the judgment thereupon given in the Exchequer Chamber there is no writ of error, except to the House of Lords. A writ of error, therefore, still lies to the House of Lords, first, after a reversal or affirmance of a judgment of this Court in the Exchequer; secondly, without a previous writ of error to the Exchequer, upon the reversal or affirmance by the King's Bench of the judgment of an inferior Court; and thirdly, where the king is a party. *Qui tam* actions do not fall within the exception as to the king.

To the King's Bench, either for error in fact, or error in law, a writ of error lies from all inferior Courts of record in England (with the exception of those in London and in some other places, which shall be noticed afterwards); and after judgment of affirmance or reversal here, a writ of error lies to the House of Lords. A writ of error lies in the King's Bench upon a judgment in the county palatine.

From the Common Pleas a writ of error lies to the Exchequer Chamber, before the judges of the King's Bench and the barons of the Exchequer, and afterwards to the House of Lords; from the law side of the Exchequer to the Exchequer Chamber, before the judges of the King's Bench and the Common Pleas, and afterwards to the House of Lords. Also, from the law side of the Exchequer, in cases where the king is a party, to the Exchequer Chamber, before the lord chancellor and lord

treasurer, calling to their assistance the judges of the Courts of King's Bench and Common Pleas, or some of them, and from thence to the House of Lords; from the Exchequer in Scotland to the House of Lords; and from the King's Bench and Court of Exchequer Chamber in Ireland, also to the House of Lords.

Upon a judgment given in the Cinque Ports, no writ of error lies to the Court of King's Bench; but by custom such judgment is examinable by bill, in nature of a writ of error, before the lord keeper or warden of the cinque ports, in his Court of Shepway. So, upon a judgment given in the Court of Stannaries of the duchy of Cornwall, no writ of error lies to the King's Bench; but the error is examinable upon appeal to the warden of the Stannaries, and from him to the prince, or, if there be no prince, to the king's council; provided the judgment have been for a matter touching the Stannaries.

Upon a judgment in the Sheriff's Court, or at the law side of the Mayor's Court in the city of London, a writ of error lies to the Court of Hustings, and from thence to commissioners appointed for that purpose by commission under the Great Seal (usually five of the judges), and from them to the House of Lords.

A writ of error was not *amendable* at common law. But now, by 5 Geo. I. c. 13, all writs of error, wherein there shall be any variance from the original record, or other defect, may and shall be amended and made agreeable to such record, by the respective courts where such writs of error shall be made returnable.

The amendment in this case is now allowed, as a matter of course, without costs; but if the rule be also to amend the assignment of errors, it is upon payment of costs. According to the statute, the writ is to be amended by the Court in which it is returnable; yet this seems to be only in cases where the original record, and not a transcript merely, is removed into such Court; and, therefore, upon a writ of error from the King's Bench to the Exchequer Chamber, it was holden that the writ should be amended in the Court of King's Bench, where the original record lay. Upon amending a writ of error, new bail must be put in to the amended writ in the Court below.

After the transcript has been returned and filed, the defendant in error may move the Court, in which the writ of error was returnable, to quash it, for some fault not amendable within the stat. 5 Geo. I. c. 13, above-

mentioned; as, for having been returnable before the judgment was given: but where the defendant had ruled the plaintiff in error to assign, and the latter had assigned and the defendant joined in error, which had been argued, and the judgment of the Common Pleas reversed, the King's Bench refused at that stage to quash the writ of error, on account of its having been returnable in the term before that of which the judgment of the Common Pleas was signed. The writ also may be quashed as to one judgment, and stand good for another; and if a writ of error be sued out against good faith, for instance, if a defendant obtain time to plead, upon the condition of giving judgment of the term, as this must be deemed an undertaking to give an available judgment, if the defendant bring error, the Court upon application will quash the writ.

Costs are payable by the plaintiff in error, in all cases, upon quashing a writ of error, even where none were recoverable in the original action; it being enacted by stat. 4 Anne, c. 16, s, 25, that, upon quashing a writ of error for variance from the original record, or other defect, the defendant in error shall recover against the plaintiff issuing out such writ, his costs, as he should have had if the judgment had been affirmed. And this includes the costs of quashing the writ of error.

A writ of error *abates* where the plaintiff in error dies *before* error assigned; in which case the defendant in error must sue out a *scire facias quare executionem non* against the executors to revive the judgment before he can sue out execution. But if he die *after* errors assigned, the writ does not abate, but the defendant must join in error, and proceed to have the judgment affirmed, if not erroneous, and, if there had been only one plaintiff in error, should afterwards revive the judgment by *scire facias* against his executors. Where, however, there are several plaintiffs in error, the writ does not abate by the death of one.

But the death of the defendant in error does not abate the writ; and much less the death of one of several defendants. If a sole defendant, or all the defendants die, the executors or administrators may be made parties by the *scire facias ad audiendum errores*, and be thereby compelled to join in error; or if one of several defendants die, upon suggesting the death upon the roll, you may proceed against the survivor. As to compelling the plaintiff, in such a case, to assign errors, if the defendant died before errors assigned, the survivors or executors, &c.

may compel the assignment by *scire facias quare executionem non:* but if the defendant died after errors assigned, the survivors or the executors, &c. may proceed till judgment is affirmed, as if the defendant were living; and then, in case of the death of a sole defendant, his executors must revive the judgment by *scire facias.*

By the death of the chief justice before he has made and signed his return, the writ of error becomes ineffectual, and the defendant, with the leave of the Court, may sue out execution. But if the return have been signed by the chief justice, it may be certified after his death.

The writ may also abate by the act of the party; as where a femme sole, plaintiff in error, married pending the writ, the writ thereby abated, and the Court gave the defendant leave to sue out execution, although the plaintiff and her husband had brought a second writ of error. Also, where a femme sole, defendant in error, married, and the plaintiff pleaded this matter in abatement to the *scire facias quare executionem non,* the Court allowed the defendant's *sci. fa.* to be quashed without costs. But bankruptcy is no abatement of a writ of error; and the proceedings after it by the assignees shall be in the bankrupt's name.

A writ of error in Parliament is not abated by a prorogation, or dissolution; but the proceedings continue in the same state in which they were at the time of such prorogation or dissolution.

The effect of abatement of a writ of error is, that the plaintiffs or their representatives may sue out and prosecute a new writ; yet if it has abated by the act or default of the party, the second writ is no *supersedeas,* and the defendant may sue out execution even without the leave of the Court; but if it have abated by the act of God, or by act of law, the second writ will be a *supersedeas,* and the defendant in error, even if no second writ be brought, cannot sue out execution without the leave of the Court.

When a writ of error in the Exchequer Chamber abates or is discontinued, the transcript must be remitted, and a *remittitur* entered, before the defendant can sue out execution in this Court. And the same, it should seem, of a writ of error in Parliament.

If the plaintiff in error make default after errors assigned, the writ of error will thereby be discontinued. Formerly, if he did not assign errors within the term next after the record was certified, it would have been a discontinuance; but it has since been determined otherwise.

Writ of Error from the Court of King's Bench to the Exchequer Chamber.

The writ runs in the king's name, and is directed to the chief justice of the Court of King's Bench; it being a general rule, that a writ of error must be directed to the person before whom the judgment was given, or his successor, and in whose custody the record then is. It is tested on the day on which it is sued out, and which need not be a seal day. It states the plaint below, and, in general, recites shortly the 1 Wm. IV. c. 70, s. 8; and commands the chief justice, that he send before the judges of the Common Pleas and the barons of the Exchequer, in the Exchequer Chamber, on a particular day, a transcript of the record, &c. It is not necessary that there should be fifteen days between the *teste* and the return of it.

The following is the usual form:

William the Fourth, by the grace of God of the United Kingdom of Great Britain and Ireland, king, defender of the faith:

To our right trusty and well-beloved sir Thomas Denman, knight, our chief justice assigned to hold pleas in our court before us [*if from the Common Pleas,* "to our right trusty and well-beloved sir Nicholas Conyngham Tindal, knight, our chief justice of the Common Bench," *if from the Exchequer,* "to our treasurer and barons of our Exchequer,"] greeting: Forasmuch as in the record and proceedings, and also in the giving of judgment in a plaint which was in our court before us [*if from the Common Pleas* "before you and your companions our justices of the Bench," *if from the Exchequer,* "before you the said barons in our Court of the said Exchequer,"] between A. B. and C. D. of a plea of debt [*or as the form of action was*] as it is said, manifest error hath intervened, to the great damage of the said C. D. as by his complaint we are informed. And whereas, by a statute made in our parliament at a session thereof holden at Westminster, in the county of Middlesex, in the first year of our reign, intituled, "An Act for the more effectual Administration of Justice in England and Wales," it was (amongst other things) enacted, that writs of error, upon any judgment given by any of our Courts of King's Bench, Common Pleas, and Exchequer, should thereafter be made returnable only before the judges, or judges and barons, as the case might be, of the other two Courts in the Exchequer

Chamber, any law or statute to the contrary notwithstanding; that a transcript of the record only should be annexed to the return of the writ, and the Court of Error, after errors were duly assigned, and issue in error joined, should, at such time as the judges should appoint, either in term or vacation, review the proceedings, and give judgment as they should be advised thereon; and such proceedings and judgment, as altered or affirmed, should be entered on the original record, and such further proceeding as might be necessary thereon should be awarded by the court in which the original record remained, from which judgment in error no writ of error should lie or be had, except the same were made returnable in the High Court of Parliament, as in the said Act is more fully contained We, therefore, being willing that the said error, if any there be, should in due manner be corrected according to the form of the statute aforesaid, and full and speedy justice done to the parties aforesaid in this behalf, do command you, that if judgment be thereupon given, then you distinctly and openly send, under your seal, to our justices of the bench and the barons of our Exchequer of the degree of the coif [*if from the Common Pleas,* "to our justices assigned to hold pleas in our court before us, and the barons of our Exchequer of the degree of the coif," *if from the Exchequer* "to our justices assigned to hold pleas in our court before us, and our justices of the Common Bench,"] in the Exchequer Chamber aforesaid, on the day of next ensuing, a transcript of the record and proceedings of the plaint aforesaid, with all things touching the same, and this writ, that the said transcript and proceedings being viewed and examined by the said justices and barons [*if from the Exchequer, omit* "and barons,"] they may cause to be further done thereupon what of right and according to the form of the statute aforesaid ought to be done.

Witness ourself at Westminster, the day of , in the year of our reign.

Care must be taken, in all cases, that the writ corresponds with the record intended to be removed, in the names and additions of the parties, in the description of the court in which the judgment was given, and in the description of the action; for the Court can proceed only on that record, which the writ authorises them to examine.

Where the error is supposed to be as well in giving the

judgment as in awarding execution upon it, as in *scire facias* to revive a judgment, the writ of error is said to be *tam quam*, or in the words of the writ, *tam in reditione judicii, quam in adjudicatione executionis*.

Make out a præcipe for the writ, stating the names of the parties, the form of action, and whether the judgment were upon verdict, or inquiry, &c., and stating where and when it is to be made returnable. Take this to the cursitor of the county in which the venue was laid in the original action, who will make out the writ, and get it sealed at the next general seal, or (if expedition be requisite) at a private seal. If it be sealed at a general seal, pay him £1 10*s*. 6*d*.; if at a private seal, 8*s*. 6*d*. more.

Take the writ to the clerk of the errors of this Court, without delay, and he will alow it, and give you a note of allowance; pay him £2. Make a copy of this note, and serve it upon the attorney of the opposite party, at the same time showing him the original. This note of allowance may be served before the plaintiff is entitled to sign final judgment: and it is usual to serve it at the time of taxing the costs, in order to prevent the other party from suing out execution. For although the allowance itself is a *supersedeas*, and the service of the copy of the note of allowance only necessary in order to bring the opposite attorney into contempt, should he afterwards sue out execution, yet this service before execution actually sued out is advisable, and should not be omitted, as it will save the expense of a subsequent application to the Court, to set aside the execution. The note of the allowance must properly describe the form of action; if it misdescribe it, it is no stay whatever of plaintiff's proceeding to execution. Where the defendant had wilfully concealed the issuing the writ of error from the plaintiff, the Court set aside an execution afterwards issued, without costs, and made the defendant undertake that no action should be brought.

To render a writ of error a *supersedeas* of *execution*, two things are requisite: the allowance, and putting in bail. If the writ be sued out, and allowed *before* final (or even interlocutory judgment,) and judgment be before the writ of error is returnable, the writ will be a *supersedeas* of execution; provided bail in error be put in and notice thereof given, within four clear days after the judgment is signed, the writ in this case having effect only from the time of signing the judgment.

If the writ of error be sued out *after* judgment, and

before execution, it operates as a *supersedeas* from the time of the allowance; provided bail in error be put in, and notice thereof given, within four clear days after the allowance. And if the writ is sued out, and before allowance, actual notice is given to the opposite party, and of its being delivered to the clerk of the errors, it operates as a *supersedeas* from the time of the notice.

But after the sheriff has partly executed a writ, he must proceed in the execution, notwithstanding a writ of error, and pay the money into Court, to abide the event of the writ of error.

Where it appears that the writ of error is brought for the purpose of delay; or where the writ is brought against good faith, or a positive agreement; or if bail be not put in within due time; or if the writ of error be returnable in a term previous to that of which the judgment is signed; the writ of error neither operates as a *supersedeas* of execution, nor will proceedings in an action on the judgment, or proceedings against bail, be stayed.

A writ of error brought upon a judgment of *nonsuit*, does not, unless error be pointed out, operate as a *supersedeas*, on the ground that the writ could only be brought for delay.

If a writ of error *abate* by the act or default of the party, a second writ of error will not operate as a *supersedeas*, and the defendant in error may sue out execution without the leave of the Court; but if it have abated by the act of God, or by act of law, the second writ will be a *supersedeas* from the allowance of it, as in ordinary cases.

If the writ of error be allowed *before* judgment is signed, the plaintiff in error has four clear days, after the signing of the judgment, to put in bail: as, if judgment be signed on Monday, he shall have all Friday to put in bail; and in default of his doing so, the defendant cannot sue out execution until the Saturday. But if the writ be sued out *after* judgment, the plaintiff in error has four clear days to put in bail, from the time of the allowance of the writ of error; and if plaintiff in error do not put in bail within the time specified, the defendant may sue out execution, but the writ of error may still be prosecuted as if no bail were required.

To put in and justify bail, make a note or memorandum of the bail upon a piece of paper; intitle it in the original cause, and take it to the clerk of the errors of this Court, who will enter the same in his book. Appoint with him to meet you at the chambers or house of a judge

of this Court, in order to take the recogizance. Take the bail with you, at the time appointed, and the clerk of the errors will take their recognizances; pay him £1 6*s*. if at chambers, and 3*s*. 4*d*. more, if at Westminster or at a judge's house.

After bail has been put in, notice must be given without delay to the defendant in error or his attorney, before the expiration of the four days abovementioned.

The plaintiff in error putting in bail as defendant in the action, may justify bail at the time they are put in. And if the notice of bail be accompanied by an affidavit of each of the bail, as to sufficiency, and the bail be excepted to, costs will be allowed as in case of the action.

After notice of bail without such affidavit, the defendant in error has twenty days allowed to accept of or except to them; and if he do not except within that time, the recognizance will be allowed of course. If you except to them, obtain from the clerk of the errors a rule for better bail; pay him 2*s*.; and serve a copy upon the plaintiff's attorney.

After service of the rule for *better bail*, the plaintiff in error has four days to justify; or if in vacation, until the first day of next term. But if the bail are excepted to in vacation, and a notice of exception be given, requiring them to justify before a judge, the bail must justify within four days from the time of such notice. Two days' notice of justification is sufficient.

Bail are added with the clerk of the errors, in the same manner that bail are added in the original action.

The mode of justifying is nearly the same as in the original action. Give notice of justification to the attorney of the defendant in error, in the same manner as in the original action. Make an affidavit of service of the notice of justification, and of the affidavits of sufficiency having been made, if indeed they were so; get the clerk of the errors to attend at Westminster with the bail book; attend there with the bail; and give the affidavit and a motion-paper to counsel, who will move to justify. Pay the clerk of the errors 10*s*.; and the officers of the Court, 9*s*. 6*d*. Draw up the rule of allowance with the clerk of the rules, the same evening; and serve a copy of it on the attorney of the defendant in error.

After the service of the note of allowance of the writ of error, and before the writ is returnable, and after bail has been put in and the copy of the rule of allowance served, a transcript or copy of the record must be made

out by the clerk of the errors, which is afterwards to be left in the Court above, the record itself being in no case left there. If the plaintiff in error do not procure the record to be certified within the time abovementioned, the defendant may rule the plaintiff to transcribe; and if he will not, the defendant may sign judgment of *nonpros.* To do this, let the defendant get the rule to transcribe from the clerk of the errors; pay him 2*s.*; serve a copy on the attorney of the plaintiff in error, or on the plaintiff himself. This is an eight-day rule, and the plaintiff in error must procure the record to be certified within eight days exclusive after the service of it, otherwise the defendant may sign judgment of *nonpros.* This is the only method the defendant has of compelling the plaintiff to proceed with his writ of error; for the defendant cannot transcribe the record. The attorney of the defendant in error must immediately leave with the clerk of the errors a copy of all the proceedings from the declaration to the judgment. The clerk of the errors will thereupon send to the plaintiff's attorney for a guinea, in part of the transcript money; and if it be not paid, he will sign judgment of *nonpros,* upon the defendant's attorney producing an affidavit of service of the rule to transcribe. But if paid, he then proceeds to transcribe the record; and when the transcript is completed, he sends to the plaintiff's attorney for the remainder of the transcript money, and if not paid, he will sign judgment of *nonpros.* But if paid, the clerk of the errors and the defendant's attorney examine the transcript with the roll (upon which the defendant in error must have previously entered the issue, and the other proceedings to judgment inclusive); and the transcript is then annexed to the writ of error. Pay the clerk of the errors 2*s.* 6*d.* for examining the transcript; and immediately docket your judgment and carry in the roll. Or if the roll have been already carried in, then get the transcript from the clerk of the errors; take it to the treasury at Westminster, and examine it with the roll; you may leave the transcript there, and the bag-bearer will return it to the clerk of the errors. Either party may have a copy of the transcript; but the defendant's attorney should bespeak one forthwith.

When the transcript has been examined, the clerk of the errors in the King's Bench will then deliver it to the clerk of the errors in the Exchequer Chamber. The cause is thereby removed into the Exchequer Chamber, and all the future proceedings, to judgment, must be had in that Court.

In the term after plaintiff has transcribed,—or, if the rule to transcribe were not served until the next or some subsequent term to that in which the writ of error was returnable, then in the same term in which the plaintiff has transcribed—the clerk of the errors in the Exchequer Chamber will give the defendant a rule to allege diminution; pay him 2*s*. 4*d*.; serve a copy of it on the plaintiff's attorney. This rule expires in eight days exclusive from the service; and if the plaintiff do not allege diminution within that time, (that is, if he do not pay the diminution money to the clerk of the errors,) then, upon affidavit of service of the rule, the clerk of the errors will sign a *nonpros*, and tax the defendant his costs; or he will send to the plaintiff's attorney (which is more usual), and if he do not get an answer the next morning, he will sign a *nonpros*.

In the same or a subsequent term after the plaintiff has alleged diminution, the clerk of the errors will give the defendant a rule to assign errors, which will expire in eight days exclusive after service; and a copy thereof being served on the plaintiff's attorney, if he do not assign errors within the time limited by the rule, the clerk of the errors will upon application sign *nonpros*, and tax the defendant his costs. The assignment of errors is engrossed on plain paper and filed with the clerk of the errors, who always receives the assignment of common errors without counsel's signature; indeed, if the common errors be assigned, they are usually prepared by the clerk of the errors; pay him 8*s*. A special assignment of errors should be signed by counsel.

As soon as errors have been assigned, notice thereof should be given to the defendant, in order that he may come in and make his defence.

To the assignment of errors, the defendant may plead either the common joinder *in nullo est erratum*, or a special plea; or he may demur.

The common joinder (*in nullo est erratum*) alleges that there is no error in the record and proceedings, and prays that the Court may proceed to examine them, and affirm the judgment. The following is the form:

In the Exchequer Chamber.

A. B. ats. C. D. } And hereupon the said A. B., by P. A. his attorney, comes and says that there is no error, either in the record and proceedings aforesaid, or in the giving the judgment aforesaid, and he prays that

the said justices and barons [*in error from the Exchequer, omit* "and barons,"] in the Exchequer Chamber here may proceed to examine as well the record and proceedings aforesaid, as the matters aforesaid above assigned for error, and the judgment aforesaid, in manner aforesaid given, may in all things be affirmed, &c. But because the said justices and barons [*in error from the Exchequer, omit* "and barons,"] in the Exchequer Chamber here, are not yet advised what judgment to give of and upon the premises, a day is therefore given to the parties aforesaid here, until , to hear their judgment thereon, for that the said justices and barons, [*in error from the Exchequer, omit* "and barons,"] in the Exchequer Chamber aforesaid are not yet advised thereof, &c.

Engross the plea, joinder, &c. on plain paper, and file them with the clerk of the errors. They should be signed by counsel; but the clerks receive the common joinder without such signature. If a release of errors be pleaded in the Exchequer Chamber, they may try it, and award a *venire* under the seal of the Court of Exchequer.

After the joinder is filed, either party may get the cause entered for argument, but there are only two days in each term, appointed in the Exchequer for the despatch of business; one, usually the third or fourth day of the term, called the general affirmance day; the other, a day or two before the end of the term, called the adjournment-day. The cause must be entered with the clerk of the errors for argument, for either of these days; and it should be entered ten days before argument. Care must be taken to enter it, in time for the paper-books to be delivered to the judges; and if too late for this, before the general affirmance day, the clerk will set it down for the adjournment day, for an additional fee. If entered for the general affirmance day, pay him 9*s*. 6*d*. The cause should be set down by the plaintiff; but the defendant may enter it.

The clerk of the errors will enter the proceedings upon record, pay him according to the length; get an office copy thereof from him, for which you pay 8*d*. per sheet, and serve a copy of it upon the opposite attorney. The paper-books (being copies of the proceedings to the joinder inclusive, upon unstamped brief paper) must next be made out, and delivered to the judges, four days before argument: the plaintiff must deliver one to each of the judges of the Common Pleas; and the defendant one to

each of the barons; but the clerk of the errors will make them out and deliver them, if required.

The common judgment for the *defendant* in error is, that the judgment be affirmed. For the *plaintiff* in error, where judgment is given for him, it is that the judgment be reversed.

Where the judgment in the Court below is given for the *plaintiff*, and the defendant, *before* execution had, sues out a writ of error, if the judgment be affirmed, or the writ of error be discontinued in default of the party, or the plaintiff in error be nonsuit, the defendant in error shall, at the discretion of the Court, recover his costs and damages for the delay.

Where judgment is given for the *defendant* in a Court of record, and the plaintiff thereupon brings a writ of error, if the judgment be affirmed, or the writ of error be discontinued, or the plaintiff be nonsuit, the defendant in error shall have his costs.

But where judgment is reversed, each party pays his own costs in error; but the prevailing party shall have his costs in the original action, as the Court of error must give the same judgment which ought to have been given by the Court below.

Four days exclusive after the affirmance, the clerk of the errors will sign judgment, and tax your costs. An entry of the affirmance, &c. must then be made on the judgment roll; pay 5*s.* for making the entry to the clerk of the errors who will receive it for the clerk of the treasury.

As execution must issue out of the King's Bench, after the transcript, &c. is remitted, and the entry made on the judgment roll as above-mentioned execution by *fi. fa.*, *ca. sa.*, or *elegit*, may be sued out of that Court. The execution is sued out in that Court, as in ordinary cases; and the transcript must be remitted to it, before the writ of execution is sued out, or at least before it is returnable, otherwise the writ of execution may be set aside for irregularity. Before your writ of execution is returnable, apply to the clerk of the errors in the Exchequer Chamber for the transcript, and take it to the treasury of the King's Bench, and file it there; pay 2*s.* 6*d.*

If the judgment below be *reversed*, the plaintiff in error shall have a writ of restitution, in order that he may be restored to all he has lost by the judgment. If execution on the former judgment have been actually executed, and the money paid over, the writ of restitution may issue

without any previous *scire facias;* but if the money have not been paid over, a *scire facias quare restitutionem non,* suggesting the matter of fact, *viz.* the sum levied, &c. must previously issue.

Beside this writ of restitution, the Court, upon application, will oblige the defendant to enter into a rule not to commit waste pending the writ of error, if the justice of the case require it.

Writ of Error to the House of Lords, after affirmance or reversal in the Exchequer Chamber.

After the judgment of the Court of King's Bench has been affirmed or reversed in the Court of Exchequer Chamber, a writ of error may be brought upon the judgment of affirmance, &c. returnable in the House of Lords.

The writ of error in this case is directed to the chief justice of the Court of King's Bench. Make out a præcipe for the writ; take this to the cursitor of the county in which the venue is laid in the original action, who will make out the writ, and get it sealed at the next general seal, or, (if expedition be requisite) at a private seal, having first procured a warrant from the crown for that purpose. Pay £6 15*s.* 6*d.*, and pay 8*s.* 6*d.* more, if the writ were sealed at a private seal.

Take the writ to the clerk of the errors of this Court, who will allow it, and give you a note of the allowance; pay him £4. Make a copy of the note, and serve it upon the attorney of the opposite party, at the same time shewing him the original.

Bail must again be put in, notwithstanding bail having been already put in to the former writ of error.

The defendant must then rule the plaintiff to transcribe, and let the transcript be prepared and examined. Get the rule to transcribe from the clerk of the errors; pay him 2*s.*; serve a copy on the attorney of the plaintiff in error, or on the plaintiff himself. Let the transcript be made up.

When the transcript has been completed, examined, and annexed to the writ of error, the chief justice of this Court goes in person, attended by the clerk of the errors, to the House of Lords, with the record itself and the transcript. The latter is left there; but the record is brought back, that execution may be awarded, if the judgment be affirmed in the Court above. The chief justice's fee is £4.

By an order of the House of Lords, 13th July, 1678,

writs of error in parliament shall be brought in (that is, the record shall be certified) within fourteen days from the first day of the session in which such writs shall be returnable; unless it be upon judgments given during the session; in which case the writ must be brought in within fourteen days after the judgment is given; otherwise such writs shall not be received.

By an order of the House, 13th Dec. 1661, if the plaintiff do not assign errors within eight days after the removal of the record, the clerk of parliament, upon request of the defendant, shall record that the plaintiff hath not prosecuted his writ of error; and the house will thereupon award that the plaintiff shall lose his writ, that the defendant shall go without day, and that the record be remitted. The practice, however, in order to compel the plaintiff to assign errors, is, to draw up a petition to the house, stating the judgment and writ of error shortly, and that the plaintiff has not as yet assigned errors, and praying that the transcript may be remitted, in order that the defendant may have execution thereon. Get a peer to present this, and to move that a day be given the plaintiff to assign errors; upon which, the house will make an order that unless the plaintiff assign errors on or before a day therein specified (usually eight days from the date of the order) the transcript shall be remitted to the Court below. Call the next day at the office of the clerk in parliament, where the order will be drawn up and given to you; serve it, without delay, on the plaintiff's attorney; and if the plaintiff do not assign errors within the time limited in the order, call at the office of the clerk in parliament, and he will sign judgment of *nonpros* and enter a *remittitur*, and the defendant in error will be entitled to his costs.

The assignment of errors is engrossed on plain paper, and should, if special, be signed by counsel. File it in the office of the clerk in parliament.

The defendant in error usually comes in voluntarily and pleads either the common joinder *in nullo est erratum,* or a special plea or demurrer. These should be filed with the clerk of the parliament and signed by counsel.

After the joinder is filed, either party may get a peer to move that the cause may be set down for hearing, which will be ordered accordingly, and set down in the list, and called on in its turn. The day for hearing once appointed, cannot be altered, nor the cause set down for argument out of its turn, unless upon petition; and oath must be made, at the bar of the house, of the service of notice on the opposite party.

Each party must have his case drawn up and signed, by the counsel engaged in the Court below, or those who are to argue it in parliament; and two hundred and fifty copies of each case must be delivered at the parliament office, for the use of the peers.

As soon as the argument is closed, the lord chancellor delivers his opinion on the case, and moves that the judgmen be either affirmed or reversed. The other peers, if they wish, deliver their opinion; and the affirmance or reversal of the judgment is decided by the votes of peers, present, no proxies being allowed. If the votes be equal, the judgment is affirmed.

As soon as the judgment of reversal or affirmance is given, the clerk of parliament will draw up a *remittitur*, and the transcript is thereby remitted to the Court of King's Bench, where execution must be awarded.

If the House of Lords do not award costs, the King's Bench can in no case supply the defect.

The prevailing party may get the transcript and *remittitur* at the office of the clerk of parliament, upon paying the fees, and he should then file it with the clerk of the treasury of the King's Bench. The execution may be by *fi. fa.*, *ca. sa.*, or *elegit*.

Writ of Error from inferior Courts to the Court of King's Bench.

The writ is directed to the judges of the inferior Court (except that in the county palatine of Lancaster it is directed to the chancellor,) in which the judgment was given, and is made returnable on the first or last general return of the term, wheresoever, &c.

To obtain it, make out a præcipe for the writ. Take it to the cursitor, and he will make out the writ; pay him £1 10*s*. 6*d*.; and if sealed at a private seal, 8*s*. 6*d*. more. And the clerk of the errors, or other proper officer of the Court below, will allow it. Serve the copy of the note of allowance as usual.

The bail is put in and justified, as in ordinary cases, according to the usage and practice of the inferior Court.

Upon the return of the writ of error, or on bail being put in and perfected, the defendant in error should serve the plaintiff with a rule out of the inferior Court, to transcribe; and the plaintiff should thereupon bespeak the transcript of the proper officer below, and, when complete, take it to the signer of the writs in this Court. The return is usually signed by the judge of the inferior Court. The transcript must be delivered to the signer of the writs before the second seal, otherwise the defendant

in error may obtain a certificate from that officer, that the writ of error is not returned, nor the transcript brought in; and upon producing such certificate to the cursitor, he will make out for him a writ *de executione judicii*, directed to the judges of the Court below, commanding them to proceed on the judgment, notwithstanding the writ of error.

After the record is certified, the plaintiff in error should immediately assign his errors. If he do not, the defendant may compel him by a *scire facias quare executionem non*, which may be sued out immediately after the transcript is brought in, although that happen to be previous to the expiration of the rule to transcribe.

Engross the writ on a plain piece of parchment; take it, together with a præcipe, to the signer of the writs, pay 1*s*. 8*d*. for signing; get it sealed, pay 7*d*. Then take it (unless it be directed to the chancellor of Lancaster or bishop of Durham, in which case its execution must be procured as that of other writs similarly directed,) to the sheriff's office; and the plaintiff in error will be summoned, or, if not, *nihil* will be returned: pay the sheriff, if *nihil* be returned, 1*s*. for each name; or if left for a *scire feci*, as is now most usual, pay 2*s*. 6*d*. for the warrant, and for the return 2*s*. each name, and 5*s* to the officer. It is not necessary that the *sci. fa.* should lie four days in the sheriff's office before the return, as in the case of a *sci. fa.* against bail.

Upon the *quarto die post* of the return of the *sci. fa.*, if the action were by original in the Court of Lancaster or Durham, or otherwise on the return day, when the plaintiff has been summoned, draw up a rule to appear with the clerk of the rules; pay him 6*d*., and serve a copy of it upon the plaintiff's attorney. This rule expires in four days after service, exclusive of the day it is given; and if the plaintiff do not assign errors within that time, you may enter up judgment on the *scire facias*, and sue out execution. If the writ be returned *nihil*, judgment cannot be signed until after eight days from the return, and then not without leave of the Court or a judge. The writ of error is not determined by such judgment, nor are you in such a case entitled to costs in error. In order, therefore, to obtain costs, you must proceed to *nonpros* the writ of error. For this purpose, obtain from the master a rule to assign errors on the back of the draft *sci. fa.*; enter it with the clerk of the rules, and pay 6*d*.; and serve a copy on the plaintiff's attorney. This rule, it must be observed,

cannot be given before the expiration of the rule to appear on the *scire facias*. This rule also expires in four days exclusive; and if the plaintiff in error do not assign errors within that time, you may sign judgment of *nonpros*, and tax your costs.

Where the plaintiff below brings error to reverse his own judgment, a *sci. fa. quare executionem non* is never sued out; but the Court will make a rule that he assign errors within a limited time, otherwise that the writ of error shall be *nonprossed*.

To assign errors, engross the assignment of errors on plain paper; get it signed by counsel; and deliver it to the defendant's attorney. This must be done in term, and not in vacation.

If the defendant wish to expedite the cause, let him get a rule to return the *certiorari* from the master, on the draft *scire facias*; enter it with the clerk of the rules; and serve a copy of it on the plaintiff's attorney; and if the *certiorari* be not sued out and returned before the expiration of this rule, the defendant may enter a *non misit breve* upon record, and proceed to affirm the judgment.

To *oblige* the defendant to join in error or plead, &c., the plaintiff must sue out a *scire facias ad audiendum errores*, and have the defendant thereupon summoned, &c. as is above directed with respect to the *sci. fa. quare executionem non*.

The plea or joinder in error is made out on plain paper, signed by counsel, and delivered to the plaintiff's attorney.

After issue is joined, the plaintiff in error (or, in default of his doing so, the defendant) must enter the proceedings upon a new roll, intituled of the term the transcript is brought in, (or, it seems, of the term in which issue is joined, and which may save a *post terminum* roll), thus:—

"As yet of term, in the third year of the reign of king William the Fourth. Witness, Sir Thomas Denman, knight."

Then enter the warrants of attorney, the writ of error, and the return; the proceedings in the inferior Court, to the end of the final judgment; then the assignment of errors, joinder, &c.; and lastly, a *curia advisari vult*.

Take the roll to the clerk of the judgments, and he will enter the pleadings; pay for the entry.

Either party may move for a *concilium*. For this purpose, make out a motion paper, and get it signed by coun-

sel; take it to the office of the clerk of the rules, and draw up the rule; pay him 4s. and serve a copy of it on the opposite attorney. Then enter the cause for argument with the clerk of the papers.

Copies of the proceedings must be made upon unstamped brief paper (usually termed paper-books) with the objections intended to be insisted on in argument, marked in the margin, and be delivered to the judges, on or before Saturday, if the cause be set down to be argued on the following Tuesday, or on or before Tuesday, if the cause be set down to be argued on the following Friday: the plaintiff's attorney delivers one to the chief justice, and one to the senior judge; the defendant's attorney, one to each of the other judges; and if either party neglect to deliver books, the other party may deliver all, and be allowed for them in costs. Pay the judge's clerks 2*s.* with each paper-book. Each party must also furnish his counsel with a paper-book, for the purpose of arguing the cause.

On a judgment, draw up your rule for judgment with the clerk of the rules; pay him 2*s.*; enter the judgment on the roll: take the rule and roll to the master, and he will mark the latter, and tax the costs.

If the former judgment be affirmed, this Court will order the master to compute interest upon it, by way of damages, and add it to the costs, in the same manner as the Court of Exchequer Chamber.

The writs of execution and restitution are sued out of the Court of King's Bench, notwithstanding the original record remains in the Court below.

Writ of Error Coram Nobis.

The writ is directed "To our justices assigned to hold pleas in our Court before us."

Make out a *præcipe* for the writ. Take it to the cursitor; and he will issue the writ. Take it then to the master in the Court of King's Bench, and he will allow it in open Court; pay him 2*s.* 6*d.* Draw up the rule of allowance with the clerk of the rules; and serve a copy of it upon the opposite attorney. If the error to be assigned be an error in fact, there must be an affidavit thereof.

The bail is put in and justified as directed before.

After bail is completed, or when bail is not required after the copy of the allowance of the writ of error has been served, the master will give you a rule upon the plaintiff to assign errors. Enter it with the clerk of the rules; pay him 6*d.*; and serve a copy of it on the plaintiff's attorney. This

is a four-day rule; and if the plaintiff do not assign errors before the expiration of it, you may sign judgment of *non-pros*, and tax your costs.

The assignment of errors must be engrossed on plain paper, and signed by counsel. Deliver it to the defendant's attorney. The *certiorari* is tested in the name of the Chief Justice of the King's Bench, and returnable *immediately*. Get it signed by the signer of the writs, and sealed; pay 1*s*. 8*d*. signing; sealing 7*d*. Then leave it with the officer or person to whom it is directed, and get it returned.

If the defendant wish to expedite the cause, he should get a rule from the master to return the *certiorari;* enter it with the clerk of the rules; pay him 6*d*.; and serve a copy on the plaintiff's attorney. This is a four-day rule; and if, upon its expiration, the *certiorari* be not returned, the defendant may enter a *non misit breve* on record, plead *in nullo est erratum*, and proceed to affirm the judgment.

As soon as errors are assigned, the defendant must plead to the assignment. But if he neglect to do so, you may compel him, by a rule obtained for that purpose from the master, and entered with the clerk of the rules, a copy of which must be served on the defendant's attorney. This is a four-day rule; and if the defendant do not join in error before it expires, the Court, upon motion, will reverse the judgment.

The plea, replication, &c. is engrossed on plain paper, signed by counsel, and delivered to the opposite attorney.

When issue is joined, the proceedings must be entered on record.

Then take the roll to the clerk of the papers, who will mark it as read; then take it and the motion paper for the concilium to the clerk of the rules, and draw up the rule; enter the rule with the clerk of the papers, and serve a copy of it on the opposite attorney. Deliver paper-books to the judges, and let the cause be argued.

After which draw up the rule for judgment with the clerk of the rules; pay him 2*s*. Then enter the judgment on the roll; take the rule and roll to the master, and he will mark the latter and tax costs. Docket and carry in the roll, and the writs of execution, &c. issue of course.

EXECUTION.

When final judgment is actually signed by the master, the party in whose favour it is given may sue out execution, before the judgment is entered on the roll, or docket; but execution cannot be sued out, if the party has agreed not to issue it, or where he is restrained by injunction, or if a writ of error be depending.

The writ of execution may be sued out at any time within a year and a day after the judgment is signed, in cases where a *scire facias* is not required, or where execution is not stayed by writ of error, injunction, agreement, or the like.

The party for whom the judgment was given may have a writ of *fieri facias*, or *elegit*, or *levari facias*, or *capias ad satisfaciendum*, at his option; or he may have them all in succession, until his judgment be satisfied; or, after suing out one, he may abandon it before it is executed, and sue out another; or he may even have several writs running at the same time, either of the same species, or of a different species; such as a *fi. fa.* and *ca. sa.*, or the like.

Care must be taken that the writ of execution strictly pursue the judgment, and be warranted by it; otherwise it will be void.

The *fieri facias* and *ca. sa.* should regularly in the first instance issue and be *directed* to the sheriff of the county in which the venue in the action was laid; and after being returned by that sheriff, a *testatum* writ may then be sued out, directed to the sheriff of another county. But an *elegit*, *levari facias*, or extent, may be directed to the sheriff of a different county in the first instance. Upon judgment in the courts at Westminster, execution may issue into the counties palatine, and upon judgments given in the counties palatine, any court of record at Westminster may issue execution into other counties in England.

Writs of execution must be made *returnable* on a day certain in term, otherwise the court will quash them, or, in the case of a *ca. sa.*, discharge the defendant. The Court, however, will in general allow defects in this respect to be amended.

The judgment, and not the writ of execution, binds the *lands* of the party; but goods and chattels are only bound by writ of execution, as far as affects *bonâ fide* purchasers, from the time the writ is delivered to the sheriff to be executed; but as far as relates to the party himself, and

all others but purchasers for a valuable consideration, writs of execution bind the party's goods from the time of their *teste* or date.

If two writs of execution against the same person be delivered to the sheriff, he must execute that first which was first delivered to him, even where both were delivered upon the same day.

The writ may be executed any time before it is returnable, at any time on the day it is returnable, and not afterwards, and either by day or night, and on any day except Sunday.

The sheriff may enter the house of the defendant, when the outer door is open, to seize the person or goods of the defendant, though neither he nor his goods be therein, on reasonable ground for suspecting he or they were there: and the sheriff may enter the house of a third person to execute a *ca. sa.* or *fi. fa.* if the defendant or his goods be actually therein, but not otherwise; and he must not remain longer than is reasonably necessary for the removal of the defendant or his goods, otherwise he would be a trespasser.

The sheriff cannot break open any outer door of the party's dwelling-house, in order to execute a writ of execution, unless in the case of a writ of *seisin*, or *habere facias possessionem*, in which case he may break open the door, if he be denied entrance by the tenant. But having got entrance at the outer door, he may in all cases break open an inner door, cupboards, trunks, &c. if necessary.

In executing a writ, a sworn and known officer, be he sheriff, undersheriff, bailiff, or serjeant, need not show his warrant or writ, although demanded; but a special bailiff must shew his warrant, if the party demands it, otherwise the latter need not obey it. And the known officer ought to declare the contents of his warrant, as at whose suit he executes it, out of what Court, and when returnable; to the end that he may pay the money. If a bailiff execute a writ before it comes to the sheriff's hands, or before the warrant is made on it, the bailiff is a trespasser.

At common law, the sheriff was bound to execute all the king's writs, without any fee or reward; and he cannot now claim any such fee or reward, unless it be provided for by statute.

Upon executing a *fi. fa.* the sheriff is entitled to 12*d*. for every 20*s*. if the sum levied do not exceed £1000, and 6*d*. for every 20*s*. over and above that sum; if he exact more, he is liable to a penalty of £40, one moiety to the

king, and the other to the informer, and also to an action by the party grieved for treble damages. He cannot charge the expenses of selling the goods by auction, because he is bound to sell the goods himself; yet, if the auction be at the request of the plaintiff or defendant, the party so requesting it must pay the expenses of it. The sheriff, however, is entitled to the poundage allowed him by the statute, after seizure of the goods, although the parties enter into a compromise before he sells them, or although the judgment and execution be afterwards set aside for irregularity. He is not entitled to poundage if the money be paid to him without any levy; nor where money is paid into Court by the sheriff, under the 43 Geo. III. c. 46, s. 2. There was some doubt, formerly, who should pay the *expenses* of the execution of a *fi. fa.*; but now, by 43 Geo. III. c. 46, s. 5, in every case of execution against the *goods* of a *defendant*, "the plaintiff may also levy the poundage, fees, and other expenses of the execution, over and above the sum recovered by the judgment." But the plaintiff in such a case must take care to levy only such a reasonable sum as would be afterwards allowed upon taxation, otherwise the Court, upon application, will order the excess to be restored, with costs. This statute only extends to execution at the suit of the plaintiff; and where it issues at the suit of the defendant, the expenses of it must, it should seem, be borne by him. The sheriff is not entitled to the expense incurred in taking and keeping possession of goods under a *fi. fa.* at the request of the party suing out the writ, although they are not sold, on account of his refusing to give an indemnity against the claims of third persons; nor is he entitled to retain anything beyond the regular poundage, for expenses incurred by keeping possession of the goods, in consequence of an injunction; and where the sheriff does anything beyond his official duty, in allowing time for dividing the property seized into lots, for the benefit of selling them to more advantage, at the instance of the defendant, the officer is entitled to some remuneration beyond poundage.

Upon executing a *ca. sa.* the sheriff is entitled to 12*d.* in every 20*s.* if the sum do not exceed £100, and 6*d.* for every 20*s.* over and above that sum, in the same manner as upon the *fi. fa.*; to be calculated upon the amount of the debt really due, and marked on the back of the writ.

Upon executing an *elegit* or *habere facias possessionem*, the sheriff is entitled to 12*d.* in every 20*s.* of the yearly

value of the lands, &c. whereof possession or seisin shall be given, if such yearly value exceed not the sum of £100, and 6*d*. in every 20*s*. of the yearly value above that sum. But where the goods are taken under an *elegit*, the sheriff is entitled *pro tanto* to poundage, as he would under a *fi. fa.*

Upon executing a writ of *levari facias* for a crown debt, the sheriff is not entitled to poundage.

If execution be sued out against two or more persons, and the whole amount be levied upon one, in actions on contract the party upon whom the whole is levied may maintain an action against the others, and oblige them to contribute their respective shares; but in actions on personal offence he cannot thus compel a contribution, and he is, in general, altogether without remedy.

If there be any irregularity in the execution of the writ, it may be set aside, with costs; but the application to set aside the execution should be made as early as possible, and, generally speaking, at all events before the end of the term in which the writ is returnable.

Fieri Facias.

The writ of *fieri facias*, a judicial writ that lieth for him which hath recovered any debt or damages in the king's courts, is a command to the person to whom it is directed, that, of the goods and chattels of the party, he cause to be made the sum recovered by the judgment, and that he have the money, and the writ itself, before the king at Westminster, on the day on which the writ is returnable. This writ of *fieri facias*, and the writ of *levari facias*, were the only writs of execution at common law; excepting in actions of trespass, in which the *capias ad satisfaciendum* was allowed.

To sue out the writ, engross it upon a plain piece of parchment, and get it sealed; pay 7*d*.; or, for a *non omittas*, 1*s*. 2*d*. It need not be signed. At the time you get the writ sealed, you must produce to the sealer of the writs the *postea*, judgment-paper, or inquisition. Indorse it thus:

"Levy the whole, [*or £ , or whatever sum you are entitled to levy for,*] besides sheriff's poundage, officers' fees, and other incidental expenses.

"P. A. James-street, plaintiff's attorney."

Also, indorse on the writ the addition and place of

abode of the defendant, or such other description of him as you may be able to give. Either leave it at the sheriff's office, with directions to give the warrant to the officer you intend should execute it; or give it, in the first instance, to the officer, who will procure the warrant upon it. The officer will thereupon execute the writ.

Elegit.

By stat. Westm. 2, (13 Edw. I.) c. 18, "where a debt is recovered or acknowledged in the king's court, or damages awarded, it shall be in the election of him that sueth, to have a *fieri facias* to the sheriff to levy the debt upon the lands and chattels of the debtor, *or* that the sheriff shall deliver to him all the chattels of the debtor (saving his oxen and beasts of his plough), and the one-half of the land, until the debt be levied, upon a reasonable price or extent." From the election given to the plaintiff by this statute, and from the entry of the award of this execution on the roll, "*quod elegit sibi executionem,*" &c. the writ of *elegit* derives its name. It may be sued out against the defendant, or, after his death, against his heir and land-tenants.

Engross the writ on a plain piece of parchment; get it sealed, pay 7*d.*; or for a *non omittas*, 1*s.* 2*d.* It need not be signed. At the time you get the writ sealed, you must produce to the sealer of the writs, the *postea*, judgment-paper, or inquisition. Indorse it to levy the debt, &c. as directed; indorse on it also the defendant's addition and place of abode, or such other description of him as you are enabled to give, and deliver it to the sheriff or officer to execute.

Levari Facias.

A writ of *levari facias* commands the sheriff to levy or make of the lands and chattels of the defendant, the sum recovered by the judgment; but the sheriff is not thereby authorised to sell or extend the lands, or deliver them to the creditor; but must collect the debt from the issues and profits of the land, and from the sale of the chattels. He may therefore collect the rents from the tenants, cut down corn and other crops growing upon that part of the land in the debtor's possession, may seize and sell all the defendant's goods and chattels, and all the beasts (even those of a stranger) he may find levant and couchant upon the land.

Excepting in the case of outlawry, however, this writ

has been completely superseded in practice by the writ of *elegit*.

Capias ad Satisfaciendum.

This writ commands the sheriff to take the body of the defendant, and him safely keep, so that he may have his body in Court on the return-day, to satisfy the plaintiff. This writ will lie in all cases where a writ of *capias* might have been used as the process to bring the defendant before the Court.

An attorney, or officer of the Court, though he could not be arrested originally in the action, may be so on a *capias ad satisfaciendum*.

But this writ does not lie in actions against any member of the royal family, nor in actions against peers or peeresses, or against members of the House of Commons during their time of privilege, or against corporations or hundredors; nor against ambassadors or their servants; nor against seamen or soldiers in his Majesty's service, unless in actions for a debt of £20 or upwards, contracted previously to their entering the service; nor against bankrupts who have obtained their certificates, for any debt which might have been proved under their commission; nor against executors or administrators for the debts of their testator or intestate, unless a *devastavit* have been returned; or against an heir for a debt to be levied on the lands descended; nor against the servants of the king or queen, without leave of the lord chamberlain.

Engross your writ on plain parchment, and get it sealed, pay 7*d.*; or, for a *non omittas*, 1*s.* 2*d.* It need not be signed. At the time you get it sealed, you must produce to the sealer of the writs the *postea*, judgment-paper, or inquisition. Indorse it thus:

"Levy the whole, (*or* £),
"P. A. James-street, plaintiff's attorney."

You must not indorse the writ to levy any expenses or poundage, unless the action were for a penalty, as an action on a bond, or the like, and your execution be for less than the penalty; or unless the defendant has by warrant of attorney or *cognovit*, or otherwise, expressly agreed to the levy of them.

As soon as your writ is prepared and sealed, leave it at the sheriff's office, with directions to give the warrant to the officer you intend should execute it; or give it in the

first instance to the officer, who will procure the warrant on it at the sheriff's office. The officer will then execute the writ, by arresting the defendant.

Execution for the Defendant.

If judgment be given for the defendant, he may have the same writs of execution for the amount of the costs awarded him, as the plaintiff might have had for his damages and costs, if he had judgment. The defendant, however, must bear the expenses of the execution, and cannot levy the same on the plaintiff.

PROCEEDINGS AGAINST BAIL.

Bail to the action are liable only to the sum sworn to by the affidavit of debt, or of any less sum the plaintiff shall recover, together with costs of the action against the principal, not exceeding in the whole the amount of their recognizance.

If an *action*, however, have been commenced against the bail, they must also pay the costs of such action, as well as the debt sworn to, and costs in the original action.

The bail to the action are not, it seems, liable to the payment of interest on the sum recovered subsequent to the judgment. But bail in error are liable to pay interest on the judgment after affirmance.

If the principal *die* at any time before the return of the *ca. sa.* the bail are thereby discharged. But if he die after the *ca. sa.* is returnable, although before the return is filed, or even whilst the writ yet remains in the sheriff's office, the bail are fixed, and the Court cannot relieve them. Where the principal dies before the return of the *ca. sa.*, the bail should apply to the Court, or to a judge at chambers in vacation, to have an *exoneretur* entered on the bail-piece.

If the principal become *bankrupt, and* obtain his certificate before the bail are fixed, the bail are thereby discharged, in all cases where the certificate is a bar: but if the bail be fixed before the allowance of the certificate, they remain liable, and the Court cannot relieve them.

If the defendant be discharged under an *insolvent act*, before his bail are fixed, the bail may apply to have an *exoneretur* entered on the bail-piece, in the same manner as if he had become a bankrupt, and obtained his certificate. If the bail be fixed before defendant's discharge, and after

such discharge they pay the debt, they may recover it of him notwithstanding such discharge.

Bail may wholly discharge themselves of their responsibility, by rendering their principal; and this may be done either before or after judgment.

If the defendant be *not* in custody, the render may be to the prison of the Court (*i. e.* the King's Bench prison), or to the gaol of the county wherein the defendant was arrested; and for the latter purpose a judge's order must be obtained, which is to be lodged with the gaoler; and a written notice of the lodgment of such order, and of the defendant's being in custody of such gaoler, must be delivered to the plaintiff's attorney or agent. If the defendant *be already in custody* at a civil suit, the bail might always, as a matter of course, have had a *habeas corpus*, as of right, to bring him up in order to render him. But now such *habeas corpus* is unnecessary, and the render may be made, in the preceding manner, as where he is not in custody.

Where bail above have not already been put in, as where bail to the sheriff are desirous of rendering their principal, *special bail must be put in before the render can be made.*

The mode of rendering a defendant, when at large, to the King's Bench prison, is thus:—Take the defendant to the Court, if sitting; or, which is much more usual, to the judge's chambers; and upon giving the judge's clerk a memorandum of the state of the cause, and (if before final judgment) the sum sworn to, or (if after final judgment) the amount of the debt and damages, or damages, as the case may be, he will make out the render and commitment, and deliver the defendant to the tipstaff, who will thereupon convey him to the King's Bench prison. Pay the judge's clerk 9*s.* 6*d.*; tipstaff 6*s.*; and pay the tipstaff also 3*s.* 6*d.* for a certificate that the defendant is in the marshal's custody, which he will give you. The render may be made by the party himself, without an attorney. Under the commitment must be added the state in which the cause or causes stand at the time of such surrender; if before declaration, "the sum sworn to on the arrest;" if a declaration hath been filed or delivered, then to the sum sworn to shall be also added, "declaration filed or delivered," "issue joined," or "interlocutory judgment signed," as the case is; if after final judgment in debt, "the debt and damages;" in other cases, "the quantum of the damages."

If the defendant do not come voluntarily to be rendered, the bail may seize him; even bail put in by the sheriff's officer, without the defendant's privity, may, after the return of the writ, seize and render him. Bail may even justify breaking doors on entering a house, (the outer door being open,) in which the principal resides, in order to seek for him, for the purpose of rendering him. They may take him, although a bankrupt, and attending before the commissioners for the purpose of being examined, and during the forty-two days after his surrender, when in other cases he is privileged from arrest. They may also, it is said, take him on a Sunday. When taken, one of the bail must constantly stay with him (unless he consent, in writing, to remain in the custody of some other person; in which case, he is usually lodged in the house of an officer) until he is rendered.

When the render is thus made, the defendant or his attorney must, without delay, give notice of such render to the plaintiff's attorney, and also make affidavit thereof before the bail in that action shall be filed or discharged; and in default thereof, such render shall be void.

After the render is thus made to the King's Bench prison, take the above affidavit of service of the notice of render to the judge's clerk or officer who has the bail-piece, and he will give it to you, keeping the affidavit as his voucher. Take the bail-piece, and the certificate given to you by the tipstaff as beforementioned, to the master, who will enter an *exoneretur* upon the bail-piece, keeping the certificate as his voucher; pay him 2*s*. 4*d*. Next, take the bail-piece, and file it with the signer of the writs, or signer of the bills of Middlesex, if the writ were issued into that county; pay him 4*d*. And, lastly, enter the render and *committitur* in the marshal's book, which is kept in the office of the clerk of the judgments; you will see the form of the entry there.

The mode of rendering a defendant when at large to the *gaol of the county* wherein he was arrested, is pointed out by the 1 Wm. IV. c. 70, s. 21, to be in the manner following:—The defendant, or his bail, or one of them, must obtain an order of a judge of either of the Courts, and must lodge it with the gaoler, and a written notice of the lodgment of such order, and of defendant's being actually in custody of such gaoler by virtue of such order, signed by defendant or the bail, or either of them, or by the attorney or agent of any or either of them, must be delivered to the plaintiff's attorney or agent. The sheriff or

other person responsible for the custody of debtors in such county gaol on such render so perfected, will be duly charged with the custody of the defendant, and the bail will be thereupon exonerated. But to complete the render, so as to obtain an *exoneretur* and discharge the bail, you should make an affidavit thereof, and of the service of the notice. You should also, it seems, get a certificate from the gaoler or keeper, and then proceed as before directed.

A defendant when in custody in a county gaol by virtue of process out of any of the superior Courts of record, may be rendered in any other action depending in any of such Courts, in the manner above mentioned; and the keeper of the gaol, or such sheriff or other person responsible for the custody of debtors, will on such render be duly charged with the custody of the defendant, and the bail will be thereupon exonerated.

If the defendant have escaped, and be retaken under an escape warrant, and lodged in the gaol of the county, &c., in which he is taken, his bail may have a writ directed to the sheriff of such county, commanding him to detain and keep such prisoner in custody in discharge of his bail; and the delivery of such writ to the sheriff shall be deemed an effectual render, and the sheriff shall afterwards be liable if the prisoner escape.

Where the defendant is already in custody, at the king's suit, or on a *criminal* account, you must have him brought up by *habeas corpus*.

The plaintiff has the option of bringing one action against both of the bail, or separate actions against each; and the latter of course should be adopted, where it is doubtful if one of the bail can be served with process, or there be some other good reason for suing separately. An action of debt is preferable to *scire facias*, excepting where you cannot serve the bail with process.

Process may be sued out against the bail on the return day of the *ca. sa.*, or afterwards; and it may bear *teste* even before that time, but the defendants cannot be holden to bail; and a copy only of the process must be served on them, as in ordinary cases in nonbailable actions, and the *venue* must be laid in Middlesex. The rest of the proceedings in the action are the same as in ordinary cases.

Bail in error bind themselves, by their recognizance, to prosecute the writ of error with effect, and also to satisfy and pay the debt, damages, and costs, awarded by the former judgment, and also the costs and damages to be

awarded for the delaying of execution, if the said former judgment should be affirmed.

As the engagement of the bail in this case is absolute, to pay the debt, &c. if judgment should be affirmed, &c., they cannot be discharged of their responsibility by the rendering of the principal, or by his bankruptcy and certificate, or even if the principal be taken upon a *ca. sa.* for the same debt and damages and costs in error.

To *proceed against bail in error*, it is not necessary to sue out a *ca. sa.* against the principal, as in the case of proceeding against bail to the action. The recognizance, however, must be entered, and the roll carried in and docketed, in the manner mentioned before.

Entry of Satisfaction on the Roll.

As soon as the judgment is satisfied, by payment, levy, or otherwise, the plaintiff, if required, must give the defendant a warrant directed to some attorney of this Court, authorising him to enter up satisfaction on the roll. This warrant must be upon a 20*s.* stamp, and may be had at the stationer's; fill it up, and get it executed in the same manner as any other warrant of attorney. Next, make out a satisfaction piece upon a piece of unstamped parchment, like a bail piece, and take it and the warrant to the clerk of the judgments, who will enter the same in his book of remembrances, and hand the satisfaction piece over to the clerk of the treasury, for the purpose of being entered on the roll. Pay for the entry 3*s.* in term, 5*s.* in vacation, 10*d.* for the keys of the treasury, and 3*s.* 4*d.* for attendance.

PROCEEDINGS IN NONBAILABLE ACTIONS.

Since the act of 2 Wm. IV. c. 39, the only process for the commencement of a personal action, (except *replevin*, or other actions removed from inferior courts,) against any person whatever, wherein the defendant either cannot be holden to bail, or the plaintiff does not wish to hold him to bail, is either by *writ of summons*, where the defendant can be served with the writ, or by *writ of summons* and *distringas*, where he cannot be served.

The writ of summons is the *only* means of commencing such personal action, excepting in an action against

several defendants, wherein you intend arresting one and not the other; in which case, the service of a copy of the *writ of capias* upon the latter, will have the same effect as the service of a writ of summons.

The writ may be issued in the above cases, by or against *any* person; and this "whether the action be brought against any person entitled to the privilege of peerage or of parliament, or of the court wherein such action shall be brought, or of any other court, or to any other privilege, or by or against any other person."

The statute 2 Wm. IV. c. 39, s. 1, prescribes the form of this writ of *summons*, and, by sect. 16, enacts, that all such proceedings as are mentioned in the writ, may be taken in default of defendant's appearance.

The following is the form :—

William the Fourth, by the grace of God of the United Kingdom of Great Britain and Ireland king, defender of the faith,

To C. D., of , in the county of , greeting. We command you, [*or*, as before, *or*, often we have commanded you,] that within eight days after the service of this writ on you, inclusive of the day of such service, you do cause an appearance to be entered for you in our Court of King's Bench, in an action on promises [*or as the case may be*,] at the suit of A. B. And take notice, that, in default of your so doing, the said A. B. may cause an appearance to be entered for you, and proceed therein to judgment and execution.

Witness [*name of the chief justice*,] at Westminster, the day of [*day of issuing the writ*,] in the year of our reign.

The following memorandum must be subscribed on the writ :—

"N. B. This writ is to be served within four calendar months from the date thereof, including the day of such date, and not afterwards."

The writ must be directed to the defendant himself, and if the *defendant* be described therein by a wrong Christian or surname, or by no Christian name, or by initials, it seems that this will not be a ground for setting it aside; the defendant will be left to his plea in abatement, which can only be pleaded where the mistake is carried into the

declaration. The misnomer may be cured by getting the writ amended, or by the defendant's attorney undertaking to appear. If the *defendant* appear by his wrong name, the plaintiff may declare against him by that name; or if he appear by his right name, the plaintiff may declare against him thereby, stating in his declaration that he was sued by the wrong name. But if the defendant do not appear, the *plaintiff* cannot cure the mistake by appearing for him in his *right* name, according to the statute, nor can he appear for him in the name by which he is sued, and afterwards declare against him in his *right* name. However, if the defendant omit to plead in abatement, and suffer the plaintiff to proceed to judgment (though he has never appeared,) in the wrong name, the Court, it seems, will not interfere to set aside the proceedings. And if a defendant be served with process by a *wrong* name, and afterwards the plaintiff enter an appearance for him, and serve him with notice of declaration, and declare against him by his *right* name, and proceed to judgment and execution, the Court will not set aside the proceedings for irregularity, merely on the ground that the defendant never appeared; because he ought to have pleaded the misnomer in abatement. But the objection to the writ on the ground of a misnomer, cannot be cured by any form of declaring, if the defendant choose to avail himself of the misnomer, by taking proper steps for that purpose.

The place and county of the *residence*, or supposed residence, of the *defendant*, or wherein the defendant is, or is supposed to be, must be mentioned in the writ and copy. This is imperatively required by the 2 Wm. IV. c. 39, s. 1, and if not mentioned, would afford a ground for setting aside the writ; but the insertion of the *supposed* residence will suffice, and the Court would not try a disputed question of residence, if the plaintiff had reasonable grounds for supposing that the residence mentioned in the writ was the correct one.

A misnomer of the *plaintiff* in the writ can, it seems, only be taken advantage of by pleading in abatement, and then only if the mistake be carried into the declaration. And it is settled, that though the plaintiff declare by a wrong Christian name, it is no ground of nonsuit at the trial, if it be shewn that the defendant knew that the action was brought by the person who actually sues.

The *addition*, either of the plaintiff or defendant, need not be inserted in the writ.

Number of Parties.

The names of all the plaintiffs should be inserted in the writ and no more; and the names of the defendants, if more than one in the action; and must not contain the names of any defendant in more actions than one.

The insertion of the nominal defendant, Richard Roe, as formerly in proceedings by bill of Middlesex or *latitat* against one defendant only, should now be avoided.

The form of the writ of summons, as prescribed by the Act, requires the cause of action to be concisely stated in it, as in an action "on promises," "of debt," "of covenant," "of detinue," "on the case," "of trover," or "of trespass," as the case may be.

The writ of summons does not specify any particular return day, nor is there any particular return day; but the defendant must, within eight days after the service thereof on him, inclusive of the day of such service, enter an appearance, whatever day the last of such eight days may happen to fall, whether in term or vacation, except the last of such eight days fall on a Sunday, Christmas-day, or a public fast or thanksgiving, when the following day is to be considered the last of such eight days; and if the last of such eight days fall on any day between the Thursday before, and the Wednesday after Easter-day, then the Wednesday after Easter day is to be considered as the last of such eight days; and if the writ be executed on any day between the tenth of August and the 24th of October, an appearance may be entered by the defendant at the expiration of such eight days, but no declaration or pleading after declaration can be filed or delivered between the said 10th of August and 24th of October. The writ is in force only, and cannot be executed after, four calendar months from the day of its date, including such day.

This writ of summons must be dated the very day it was issued, and this whether in term or vacation.

The writ must not be issued until there is a complete cause of action, lest there should be a good defence to the action.

The writ of summons and *alias*, &c. must be *tested* in the name of the chief justice, or, if there be no chief, of the senior puisne judge.

If it be not served within four months, it may be continued by an *alias*, and, if necessary, by a *pluries* writ, as hereafter mentioned. Though there be not eight days remaining of the four months when the writ is served, the

eight days for the defendant to enter an appearance must be still reckoned, as in other cases.

The writ must be *indorsed* with several memoranda, or notices.

1. It must be indorsed with the *name and place of abode of the attorney* actually suing out the same, and if such attorney be not an attorney of the Court in which the writ is sued out, then also with the name and place of abode of the attorney of such Court in whose name the writ is taken out; but if *no* attorney be employed for that purpose, then with a memorandum expressing that the same has been sued out by the *plaintiff in person*, mentioning the city, town, or parish, and also the name of the hamlet, street, and number of the house of such plaintiff's residence, if any such there be. Also, if the attorney suing out the writ sues out the same as *agent* for an attorney in the country, the name and place of abode of such attorney in the country must be indorsed on the writ. The attorney whose name is indorsed on the writ must, after a demand in writing, declare whether the writ was sued out by his authority, with the name and place of the abode of his client, if ordered.

The form of this indorsement should be as follows:—

"This writ was issued by E. F. of (*if sued out as agent for an attorney in the country, here say*, as agent for G. H. of), attorney for the plaintiff (*or* plaintiffs) withinnamed. (*Or, if sued out by the plaintiff in person*, This writ was issued in person by the plaintiff withinnamed, who resides at [*mentioning the city, town, or parish, and also the name of the hamlet, street, and number of the house of the plaintiff's residence, if any such there be.*]"

2. If the writ be issued for the recovery of any *debt*, it must be indorsed with a statement of the amount of the debt, and the amount of what the plaintiff's attorney claims, for the costs of the writ, copy, and service, and attendance to receive debt and costs; and the indorsement must also state that, upon payment thereof within four days, to the plaintiff or his attorney, further proceedings will be stayed. The defendant will be at liberty, notwithstanding such payment, to have the costs taxed, and if more than one sixth be disallowed, the plaintiff's attorney will have to pay the costs of taxation.

This indorsement must be in the following form:

"The plaintiff claims £ for debt, and £ for costs; and if the amount thereof be paid to the plaintiff or his attorney within four days from the service hereof, further proceedings will be stayed."

There is no occasion for this indorsement, where the action is not for a *debt*.

3. The person serving the writ must indorse on it the day of the week and month of the service thereof; and he must do so within three days, at least, after such service, otherwise the plaintiff will not be at liberty to enter an appearance for the defendant, according to the statute 2 Wm. IV. c. 39, s. 2; and it is to be observed, that the affidavit upon which such appearance is to be entered, must mention the day on which such indorsement was made.

The following is the form of such indorsement:

"This writ was served by me, X. Y., on C. D., on the day of 1834. X. Y.'

In order to sue out the writ of summons, prepare a *præcipe* for the office; also get a blank writ of summons (which may be had at the stationer's, or elsewhere), and fill it up according to the directions pointed out in the preceding pages. Take them to the signer of the writs, or if the writ is to be executed in Middlesex, then take them to the signer of the bills of Middlesex, who will sign the writ; pay him 2*s.* 6*d.* for signing: leave the *præcipe* with him. Then take the writ to the seal office, and get it sealed; pay 7*d.* Indorse it with the indorsements, excepting, of course, the indorsement of the day of service. Make a copy of it, together with these indorsements, for the purpose of serving such copy on the defendant. If there be two or more defendants, it may be requisite to have several writs, in order to enable the party or parties serving the same to swear to a service of a copy of a writ, if called upon so to do. In such case, let each writ correspond with the other. If the same person can serve all the defendants, then one writ will suffice. In either case, make copies for service on each defendant. Serve the defendant, and indorse on the writ the day of such service. If the defendant cannot be served within the four calendar months from the date of the writ, inclusive of such date, then you must sue out an *alias* or *pluries* writ of summons; or else, which would be most

expedient, obtain a writ of *distringas*, as directed hereafter.

The writ is serviceable in any county in England or Wales. But it must be served in the same manner as formerly adopted in the county in which the defendant is described in the writ as residing, or within two hundred yards of the border of it, and *not elsewhere*.

A copy of the writ must be served before the expiration, or on the day of the expiration of four calendar months from the date of the writ, including the day of such date. It may be served either by the attorney or his clerk, or in fact by any person who can read, so as to be able to swear that he served a true copy of the writ.

The copy of the writ must be served *personally* upon the defendant, or defendants, if there be more than one; and no difficulty in effecting personal service will dispense with it: but it is not necessary to leave the process in the actual corporal possession of the defendant; for, whether the party touches him, or puts it into his hand, is immaterial for the purpose of personal service. Personal service may be where you see a person, and bring the process to his notice. A writ put through the crevice of a door, was deemed sufficient service; and where it was inclosed in a letter, proved to have been received by the defendant, and that he took out the copy. In process against husband and wife, service on the husband is sufficient. It is not necessary to show the writ itself, unless the defendant demand it; and if the defendant refuse to receive it when tendered to him, it may be left at his house.

If the defendant, or in the case of several defendants, if all of them be not served with the copy of the writ of summons within four calendar months from the day of the date of it, including such day, you may continue the writ by, and sue out an *alias* writ of summons, and after that a *pluries*, as the case may require, until the defendant, or all the defendants in case of several, be served. Or if it be not possible to serve the defendant, you must proceed by writ of *distringas*, or else proceed to outlaw him. These *alias* and *pluries* writs, when issued into the *same* county as the writ of summons, differ only in the form from the first writ of summons, in inserting after the words, "we command you," the words "as before," or in the case of a *pluries*, "as often we have commanded you, &c." When issued into *another* county than the first writ of summons, the *alias* or *pluries* writ should describe the defendant as of the place of his residence in the county into which it is

issued, as also, as late of the place of which he was described in the first writ of summons. In other respects the *alias* or *pluries* writ (into a different county) is the same as an *alias* or *pluries* into the same county as the first writ of summons. They are sued out and indorsed, &c. in the same manner as the writ of summons; pay 2*s.* 6*d.* for signing, pay 7*d.* for sealing. They may, it should seem, be sued out and dated accordingly, at any time after the first or preceding writ. These writs should correspond strictly with the preceding writs.

Regularly, upon the defendant's being served with a copy of the writ, either he or his attorney should, within *eight days* after such service, inclusive of the day of service, *enter an appearance* with the clerk of the common bails, or, in default thereof, the plaintiff, upon making and filing an affidavit of the personal service of the copy of the writ, may enter a common appearance for the defendant, and proceed thereon, as if such defendant had duly appeared himself.

If entered by the defendant, make out a memorandum for the appearance and take it to the clerk of the common bails, who will thereupon enter the appearance. Pay him 1*s.* and if the appearance for more than one defendant be entered by the same attorney, pay him 4*d.* for each additional defendant. The memorandum of appearance so delivered to the clerk of the common bails must be dated on the day of such delivery.

If entered by the plaintiff: first search with the clerk of the common bails if the defendant have entered an appearance; and if not, then let an affidavit of the service of the summons be made, either before a judge or a commissioner of the Court, or before the clerk of the common bails, or his deputy, by the person who served it. Take it to the clerk of the common bails, together with a memorandum for the appearance as above mentioned, and he will enter the appearance The affidavit should, in all cases, describe the kind of writ that was served; and it must state that within three days, at least, after the service of the writ, the person serving it indorsed on it the day of the week and month of such service; and the affidavit must state positively the day on which such indorsement was made.

The *declaration*, in non-bailable cases, is in most respects the same as in bailable cases.

PROCEEDINGS BY WRIT OF SUMMONS AND DISTRINGAS.

Where the Defendant cannot be served with the Summons.

This proceeding is adopted in all cases where the defendant has a place of residence within England or Wales, but he cannot be arrested or served with process. It is enacted by 2 Wm. IV. c. 39, s. 3, and is as follows:—"In case it shall be made appear by affidavit, to the satisfaction of the Court out of which the process issued, or, in vacation, of any judge of either of the said courts, that any defendant has not been personally served with any such writ or summons hereinbefore mentioned, and has not, according to the exigency thereof, appeared to the action, and cannot be compelled so to do without some more efficacious process, then, and in any such case, it shall be lawful for such Court or judge to order a writ of *distringas* to be issued, directed to the sheriff of the county wherein the dwelling-house or place of abode of such defendant shall be situate, or to the sheriff of any other county, or to any other officer to be named by such Court or judge, in order to compel the appearance of such defendant; which writ of *distringas* shall be in the form and with the notice subscribed thereto mentioned in the schedule to this act; which writ of *distringas* and notice, or a copy thereof, shall be served on such defendant, if he can be met with, or, if not, shall be left at the place where such *distringas* shall be executed; and a true copy of every such writ and notice shall be delivered together therewith to the sheriff or other officer to whom such writ shall be directed; and every such writ shall be made returnable on some day in term, not being less than fifteen days after the *teste* thereof, and shall bear *teste* on the day of the issuing thereof, whether in term or in vacation; and if such writ of *distringas* shall be returned *non est inventus* and *nulla bona*, and the party suing out such writ shall not intend to proceed to outlawry or waiver, according to the authority hereinafter given, and any defendant against whom such writ of *distringas* issued shall not appear at or within eight days inclusive after the return thereof, and it shall be made appear by affidavit, to the satisfaction of the Court out of which such writ of *distringas* issued, or, in vacation, of any judge of either of the said courts, that due and proper means were taken and used to serve and execute such writ

ot *distringas*, it shall be lawful for such court or judge to authorise the party suing out such writ to enter an appearance for such defendant, and to proceed thereon to judgment and execution."

This is a material improvement upon the old common-law mode of proceeding upon an original writ, by summons, attachment, and *distringas*.

The Writ of Summons.

The writ of summons must be framed and sued out, in the manner already fully noticed in the preceding chapter. This writ remains in force during four calendar months from the day of its date inclusive. If, after due diligence, and through the defendant's default, you cannot personally serve the defendant with a copy of the writ, or obtain his attorney's undertaking to appear, and the defendant has not appeared, then, if you are desirous of enforcing an appearance, you must, after having obtained the leave of the Court or a judge for that purpose, issue a writ of *distringas*. If the defendant has been personally served with the summons, or his attorney have undertaken to appear for him, of course there would be no occasion for the writ of *distringas*, though he has not appeared; for in the first instance you might enter an appearance for him according to the statute, and in the second, might compel the attorney to enter an appearance according to his undertaking; and as soon as the appearance has been entered, you may proceed in the action, as in ordinary cases in non-bailable actions. But, in order to procure the leave of the Court or a judge for the issuing of the *distringas*, you should use all possible diligence to serve the defendant personally with the summons, and at all events you should make three several applications at his actual or supposed residence, on three different occasions; and on each of such occasions you should apprise the person whom you see, of the nature of your business, and say you will call again at a future day, naming the hour, and endeavour to make an appointment to see the defendant, and on one of such occasions you should leave a copy of the writ of summons for him; and you should, in short, collect such facts as will enable you to swear positively, or to your belief (stating the reasons for such belief), that the defendant keeps out of the way to avoid the service. If the defendant's residence be unknown, the party must use his utmost endeavours personally to serve him, and be prepared to swear specifically to such endeavours.

The Writ of Distringas.

This writ to enforce an appearance cannot be issued without the order of the Court in term, or a judge in vacation, whom you must satisfy as to the necessity for it, before they will grant the order. The application cannot be made until the expiration of eight days after the last attempt to serve the defendant with the summons. To obtain the order, first make search with the clerk of the common bails if the defendant have entered an appearance. If he have not, then make an affidavit thereof, and of the issuing of the summons, and state therein facts sufficient to shew the Court or a judge that the defendant cannot be compelled to appear without some more efficacious process. If in term time, deliver this affidavit to counsel, with a brief to move the Court, and let him move accordingly for the *distringas;* if in vacation, lay the affidavit before a judge, and if he approves of it, he will make an order accordingly. The rule, if granted, is absolute in the first instance. It should be here observed, that, though the defendant be abroad, yet if he carries on trade or keeps an establishment in this country, the Court or a judge may order the *distringas* to issue.

The affidavit in support of the application must shew that the deponent has used all possible diligence to serve the defendant personally with the summons, and at all events, that he has made three several applications at his actual or supposed residence, on three different occasions, and that on each of such occasions he apprised the person whom he saw of the nature of his business, and that he said he would call again at a future day, naming the hour, and that he endeavoured to make an appointment, and to see the defendant, and that, on one of such occasions, he left a copy of the writ for him; and the deponent should swear positively, or to his belief (stating the reason for such belief), that the defendant keeps out of the way to avoid the service. If the defendant's residence be unknown, you must then shew on the affidavit that the utmost endeavours have been used to serve him personally. A mere affidavit, that an attorney's clerk had called several times at the defendant's house, for the purpose of serving him, but that he could not find him, and that it was verily believed that he kept out of the way to avoid being served, has been held insufficient: the affidavit must shew a reasonable cause for the belief of the deponent that the service is purposely evaded: the affidavit

must state where the residence, or supposed residence of the defendant is situated. It must also set forth the tenor of the summons.

Having obtained a rule or order allowing you to sue out this *distringas*, prepare a *præcipe* for the office; also get a blank writ of *distringas* (which may be had at the stationer's or elsewhere), and fill it up; take them, together with the order for the *distringas*, to the signer of the writs, or if it is to be issued into Middlesex, then to the signer of the bills of Middlesex, who will sign the writ; pay 2*s.* 6*d.* Get it sealed, pay 7*d.* The following is the form of the writ as prescribed by 2 Wm. IV. c. 39, s. 3.

William the Fourth, by the grace of God of the United Kingdom of Great Britain and Ireland king, defender of the faith,

To the sheriff of   greeting.

We command you, that you omit not by reason of any liberty in your bailiwick, but that you enter the same, and distrain upon the goods and chattels of C. D. for the sum of forty shillings, in order to compel his appearance in our Court of King's Bench, to answer A. B. in a plea of trespass on the case [*or* debt, *or as the case may be*]; and how you shall execute this our writ you make known to us in our said Court, on the   day of   now next ensuing.

Witness [*name of Chief Justice*] at Westminster, the   day of   in the   year of our reign [*some day in term time*].

And the following notice must be subscribed to the foregoing writ.

In the Court of King's Bench,

Between A. B. Plaintiff, and C. D. Defendant.

Mr. C. D.,

Take notice, that I have this day distrained upon your goods and chattels in the sum of forty shillings, in consequence of your not having appeared in the said Court to answer the said A. B., according to the exigency of a writ of summons, bearing *teste* on the   day of   ; and that in default of your appearance to the present writ within eight days inclusive after the return hereof, the said A. B. will cause an appearance to be entered for you, and proceed thereon to judgment and execution, [*or, if the defendant be subject to outlawry*, " will cause proceedings to be taken to outlaw you"].

The 2 Wm. IV. c. 39, imperatively requires this form to be adopted, and any material variation therefrom would render it irregular, and in some cases void.

The writ remains in force for, and may be executed in, four calendar months from its date inclusive.

Unlike the writ of summons, this writ of *distringas* must be made returnable on some day in term, not being less than fifteen days after the *teste* thereof. The fifteen days are to be reckoned exclusive of the day of the *teste*. If returnable on a *dies non*, it would, it seems, be void. The sheriff is required by the writ to make his return thereto on the return day.

It should be *tested* on the day of issuing it, whether in term or vacation.

The notice subscribed to this writ of *distringas* must be intitled in the Court in which it was sued out, and in the proper names of all the plaintiffs and defendants.

If the action be for the recovery of a debt, it must be indorsed with a statement of the amount of the plaintiff's claim and costs, and that upon payment thereof, within four days, to the plaintiff or his attorney, further proceedings will be stayed.

If there be any irregularity in the writ or notice in any of these respects, the Court in term, or a judge in vacation, would set it aside.

Having sued out this writ and notice as above mentioned, and made the indorsement thereon of the debt and costs (when necessary), make a copy thereof to be served on the defendant, or to be left at the place where the *distringas* is to be executed. Then take this writ and notice to the sheriff's office, and get a warrant thereon, directed to the sheriff's officer whom you intend employing to execute the writ: pay 1*s*. for such warrant in Middlesex, London, Surrey, Sussex, or Kent; 2*s*. 6*d*. in any other county. Give the copy of the writ and notice and the warrant to the officer, who will, thereupon, execute the writ, or, you may give the writ and notice and copy to the officer you employ, and he will procure the warrant.

If the *distringas* can be executed, the officer will thereupon distrain upon the defendant's goods and chattels to the amount of 40s. under the warrant, and he should serve a copy of the writ and notice on the defendant, if he can be met with, or, if not, he should leave it at the place where the *distringas* is executed. The writ may, it seems, be executed before or on the return day, but not on a

Sunday. On the ninth day inclusive, after the return day of the *distringas*, search with the clerk of the common bails if the defendant have entered an appearance, and, if he have, you may proceed in the action as usual; if he have not, then procure the sheriff to make his return thereto, and upon an affidavit being made before a judge, &c. of the due execution of the *distringas*, and of the service of the copy thereof and notice, and upon such affidavit being filed with the clerk of the common bails, you may enter an appearance for the defendant, and proceed in the action.

If the *distringas* cannot be executed, then you must procure the sheriff to make his return thereto of *non est inventus* and *nulla bona*, which he may be compelled to do by ruling or obtaining a judge's order on him to return the writ. On the ninth day inclusive after the return day of the *distringas*, search with the clerk of the common bails if the defendant have entered an appearance; and if he have, then you may proceed in the action as usual; if he have not, then, upon an affidavit being made of the sheriff's return of *non est inventus* and *nulla bona*, and that due and proper means were taken and used to serve and execute the *distringas*, the Court in term, or a judge in vacation, if satisfied by such affidavit that such means were so taken, will make an order, allowing the plaintiff to enter an appearance for the defendant, and to proceed thereon to judgment and execution. Having obtained this rule or order, allowing you to enter an appearance, &c. take it to the clerk of the common bails, together with a memorandum for the appearance, and you may enter an appearance for the defendant and proceed in the action.

PROCEEDINGS UPON FEIGNED ISSUES.

Where a matter comes before a court of law for its decision, upon motion or argument, if a material fact be denied, and the Court think it of too much importance to be judged of summarily upon affidavits, they may order it to be tried in a feigned issue. This is the usual method of trying doubtful matters of fact in Chancery, and as a feigned issue is seldom ordered by a court of law, and proceedings are very nearly the same as on a feigned issue directed by a court of equity, we shall confine our observations to the latter.

Where the question *devisavit vel non* (a question of de-

mise or not) is in issue in equity, it is often tried upon a feigned issue. The other cases in which this proceeding is used are,—to try the existence of a *modus*, or of a real composition for tithes, or if a party or other person be heir-at-law of a person deceased, or to try the validity of a fiat of bankrupt.

This issue is usually ordered to be made up in the Court of King's Bench or Common Pleas, and to be tried before the Lord Chief Justice of such Court, either at the sittings in Middlesex or London; it is sometimes ordered to be tried in a particular county at the assizes. The interlocutory decree also directs who is to be plaintiff and who defendant.

The issue is the same in form as in ordinary cases, where the suit is commenced by writ of summons. After the usual commencement, as in an issue, it sets forth a declaration in *assumpsit* upon a wager of £10, whether the fact is so or so; then a plea, confessing the wager and *assumpsit*, but denying the fact to be as is stated in the declaration; and, lastly, the award of the *venire facias*.

Get a copy of the interlocutory decree, and leave it with a barrister or pleader, with instructions to prepare a draft of the same; or you may prepare it yourself, and leave it with the barrister or pleader to settle. When settled, give a copy of it to the opposite attorney, who will also have it settled by counsel. If you and he agree upon the form of it, you then proceed in the action. If not, you should first get an appointment for a meeting between the counsel or pleader on each side, who settled the issue; and if they cannot agree upon it, then take the interlocutory order, and the draft of the issue, to the master mentioned in the order, and he will settle the issue; for which purpose the parties may attend before him by counsel. When finally settled, give a copy of the issue to the opposite attorney; and you may indorse the notice of trial upon it, as in ordinary cases.

If the plaintiff will not make up the issue, the defendant may move the court of equity that the matter directed to be put in issue may be taken *pro confesso;* which the Court will order accordingly, unless the plaintiff shew some reasonable and satisfactory cause for his not having done so. Or if it be made up, but in such a manner that the matters intended by the Court to be tried are not put in issue or found by the jury, the Court will order a new trial.

The record of *nisi prius* must be made up, sealed, and

passed, as in ordinary cases, where the suit is commenced by writ of summons.

The jury process is also sued out as in ordinary cases, excepting that it must be made returnable on a general return day, and not on a day certain. Also, if a special jury be desired, or a view be necessary, the motion for these purposes must be made to the court of equity.

The cause must next be entered for trial with the marshal, and is the same as in ordinary cases; excepting that the interlocutory decree usually directs that particular matters therein mentioned shall be admitted or allowed in evidence; that the depositions of such witnesses as shall be dead at the time of the trial, or in such a state of health as not to be capable of attending, shall be read; and it also, in some cases, orders that the plaintiff or defendant shall attend to be examined. These and other matters ordered by the interlocutory decree, are strictly to be observed at the trial. Where the Court of Chancery has ordered that a third party shall be at liberty to attend the trial, the counsel for such party will not be permitted to call witnesses, nor address the jury.

If the plaintiff wish, he may elect to be nonsuit in this, as in ordinary cases; and an application may be made to a judge at *nisi prius* to put off the trial of an issue directed by the Lord Chancellor.

The *postea* is indorsed on the *nisi prius* record, as in ordinary cases; but it is not necessary to enter up judgment, unless where the jury have found a special verdict. After the trial, the judge before whom it was had certifies the finding of the jury, and adds in his certificate the mention of any special circumstance he may think proper, such as that the verdict was against evidence, or the like.

If the feigned issues have been ordered by a court of equity, the *costs* are entirely in the discretion of that court, and are not in any case awarded by the court of law. But if ordered by a court of common law, the costs of the issue invariably follow the verdict. Where a court of common law, however, permit parties to try a feigned issue, they may oblige the parties to consent that the costs shall be in the discretion of the Court.

If the party against whom the issue is found, be dissatisfied with the verdict, the application for a new trial may be made either to the court of law, or to the court which directed the issue.

After the expiration of the time allowed by the court of law to move for a new trial, a petition must be

presented to the court of equity for leave to set down the cause to be heard upon the equity reserved; and a copy of the interlocutory decree, and of the record of *nisi prius* and *postea* thereon, must be left with the petition.

Proceedings upon a Case stated

Where a point of law arises of a suit in equity, the Chancellor, or other judge of the Court of equity, may, if he wish to have the opinion of a court of law upon it, direct a special case to be made out and sent to a particular court of law, there to be argued, and returned with the opinion of such court certified upon it.

The case is framed by, or under the direction of, the court of equity, which also directs to what court of law the case shall be sent. If merely directed upon a particular point, you must get the case settled by counsel on both sides. As soon as the case is ready, move for a *concilium* in the court of law, set down the case for argument, have copies of it delivered to the judges, and proceed in the manner directed in the case of a special verdict or special case.

After the case has been argued, the judges certify their opinion to the court of equity, usually without stating the grounds of it; but if the judge in the court of equity be dissatisfied, or the point be of such importance that he may wish to have the opinion also of another Court upon it, he may direct it to be sent to the judges of another court of law.

Where the opinion of the Court has been certified, you petition for leave to set down the cause for hearing upon the equity reserved, in the same manner as in the case of an issue.

The preceding directions are principally abridged and arranged from "Chitty's last edition of Archbold;" to which those who are in pursuit of more extensive particulars on the more abstruse points of practice are referred.

NEW GENERAL RULES,

TO COMMENCE FROM

HILARY TERM, 4 Wm. IV. 1834.

In further pursuance of the object of preventing delay, and assimilating the practice of the courts, the following new rules have been published, and are to commence regulating the proceedings after the Hilary Term of 1834. They must be therefore carefully perused, and attended to where they make any alteration in the course to be pursued, which in general is with a view to save time, and, in some few trifling instances, expense also.

1. No demurrer, nor any pleading subsequent to the declaration, shall in any case be filed with any officer of the court, but the same shall always be delivered between the parties.

2. In the margin of every demurrer, before it is signed by counsel, some matter of law intended to be argued, shall be stated; and if any demurrer shall be delivered, without such statement, or with a frivolous statement, it may be set aside as irregular, by the Court or a judge, and leave may be given to sign judgment, as for want of a plea.

Provided, that the party demurring may, at the time of the argument, insist upon any further matters of law, of which notice shall have been given to the court, in the usual way.

3. No rule for joinder in demurrer shall be required, but the party demurring may demand a joinder in demurrer, and the opposite party shall be bound within four days after such demand, to deliver the same, otherwise judgment.

4. To a joinder in demurrer no signature of a serjeant or other counsel shall be necessary, nor any fee allowed in respect thereof.

5. The issue or demurrer book shall on all occasions be made up by the suitor, his attorney or agent, as the case may be, and not as heretofore by any officer of the court.

6. No motion or rule for a concilium shall be required; but demurrers, as well as all special cases, and special

verdicts, shall be set down for argument, at the request of either party, with the clerk of the rules in the King's Bench and Exchequer, and a secondary in the common Pleas, upon payment of a fee of one shilling, and notice thereof shall be given forthwith by such party to the opposite party.

7. Four clear days before the day appointed for argument, the plaintiff shall deliver copies of the demurrer book, special case, or special verdict, to the lord chief justice of the King's Bench or Common Pleas, or lord chief baron, as the case may be, and the senior judge of the court in which the action is brought; and the defendant shall deliver copies to the other two judges of the Court next in seniority; and in default thereof by either party, the other party may on the day following deliver such copies as ought to have been so delivered by the party making default: and the party making default shall not be heard until he shall have paid for such copies, or deposited with the clerk of the rules in the King's Bench and Exchequer, or the secondary in the Common Pleas, as the case may be, a sufficient sum to pay for such copies.

8. Where a defendant shall plead a plea of judgment recovered in another Court, he shall in the margin of such plea state the date of such judgment, and if such judgment shall be in a court of record, the number of the roll on which such proceedings are entered, if any; and in default of his so doing, the plaintiff shall be at liberty to sign judgment, as for want of a plea; and in case the same be falsely stated by the defendant, the plaintiff, on producing a certificate from the proper officer or person having the custody of the records or proceedings of the Court where such judgment is alleged to have been recovered, that there is no such record or entry of a judgment as therein stated, shall be at liberty to sign judgment, as for want of a plea, by leave of the Court, or a judge.

9. No writ of error shall be a supersedeas of execution until service of the notice of the allowance thereof, containing a statement of some particular ground of error intended to be argued.

Provided, that if the error stated in such notice shall appear to be frivolous, the Court or a judge, upon summons, may order execution to issue.

10. No rule to certify or transcribe the record shall be necessary; but the plaintiff in error shall, within twenty days after the allowance of the writ of error, get the

transcript prepared and examined with the clerk of the errors of the Court in which the judgment is given, and pay the transcript money to him; in default whereof the defendant in error, his executors, or administrators, shall be at liberty to sign judgment of *non pros.* The clerk of errors shall, after payment of the transcript money, deliver the writ of error when returnable, with the transcript annexed, to the clerk of the errors of the court of error.

11. No rule to allege diminution, nor rule to assign errors, nor *scire facias quare executionem non* shall be necessary, in order to compel an assignment of errors, but within eight days after the writ of error, with the transcript annexed, shall have been delivered to the clerk of the errors of the court of error, or to the signer of the writs in the King's Bench in cases of error to that Court, or within twenty days after the allowance of the writ of error in cases of error, *coram nobis*, or *coram vobis*, the plaintiff in error shall assign errors, and in failure to assign errors, the defendant in error, his executors, or administrators, shall be entitled to sign judgment of *non pros.*

12. The assignment of errors and subsequent pleadings thereon shall be delivered to the attorney of the opposite party, and not filed with any officer of the Court.

13. No *scire facias, ad audiendum errores* shall be necessary (unless in case of a change of parties), but the plaintiff in error may demand a joinder in error, or plead to the assignment of errors; and the defendant in error, his executors, or administrators, shall be bound within twenty days after such demand, to deliver a joinder or plea, or to demur, otherwise the judgment shall be reversed.

Provided, that if in any case the time allowed as hereinbefore mentioned, for getting the transcript prepared and examined, for assigning errors, or for delivering a joinder in error, or plea, or demurrer, shall not have expired before the tenth day of August in any year, the party entitled to such time shall have the like time for the same purpose, after the twenty-fourth day of October, without reckoning any of the days before the twelfth of August.

Provided also, that in all cases such time may be extended by a judge's order.

Provided also that in all cases of writs of error to reverse fines and common recoveries, a *scire facias* to the terretenants shall issue as heretofore.

14. When issue in law is joined, either party may set

down the case for argument with the clerk of the errors of the Court of Error, or the clerk of the rules in the King's Bench, as the case may require, and forthwith give notice in writing thereof to the other party, and proceed to argument in like manner as on a demurrer, without any rule or motion for a *concilium*.

15. Four clear days before the day appointed for argument, the plaintiff in error shall deliver copies of the judgment of the court below, and of the assignment of errors, and of the pleadings thereon, to the judges of the King's Bench, on writs of error from the Common Pleas or Exchequer, and to the judges of the Common Pleas on writs of error from the King's Bench; and the defendant in error shall deliver copies thereof to the other judges of the Court of Exchequer chamber, before whom the case is to be heard; and in default by either party, the other party may deliver such books as ought to have been delivered by the party making default, and the party making default shall not be heard until he shall have paid for such copies, or deposited with the clerk of the errors, or the clerk of the rules in the King's Bench, as the case may be, a sufficient sum to pay for such copies.

16. No entry on record of the proceedings in error shall be necessary before setting down the case for argument, but after judgment shall have been given in the court of errors in the Exchequer chamber, either party shall be at liberty to enter the proceedings in error on the judgment roll remaining in the court below, on a certificate of a clerk of the errors of the Exchequer chamber of the judgment given; for which a fee of 3*s.* 4*d.*, and no more, shall be charged.

17. Notice of taxing costs shall not be necessary in any case where the defendant has not appeared in person, or by his attorney or guardian, notwithstanding the general rule of Trinity Term, 1 Wm. IV. s. 12.

18. It shall not be necessary to repass any *Nisi Prius* record which shall have been once passed, and upon which the fees of passing shall have been paid; and if it shall be necessary to amend the day of the *teste* and return of the *distringas* or *habeas corpora*, or of the clause of *Nisi Prius*, the same may be done by the order of a judge obtained on an application *ex parte*.

19. Writs of trial shall be sealed only, and not signed.

20. Either party, after plea pleaded and a reasonable time before trial, may give notice to the other, either in

town or country, in the form hereto annexed,* or to the like effect, of his intention to adduce in evidence certain written or printed documents; and unless the adverse party shall consent, by indorsement on such notice, within forty-eight hours, to make the admission specified, the

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* In the King's Bench, Common Pleas, or Exchequer, } A. B. *v.* C. D.

Take notice that the [plaintiff *or* defendant] in this cause proposes to adduce in evidence the several documents hereunder specified, and that the same may be inspected by the [defendant *or* plaintiff,] his attorney, or agent at on between the hours of and that the [defendant *or* plaintiff] will be required to admit that such of the said documents as are specified to be originals, were respectively written, signed, or executed, as they purport respectively to have been, that such as are specified as copies are true copies, and such documents as are stated to have been served, sent, or delivered, were so served, sent, or delivered, respectively, saving all just exceptions to the admissibility of all such documents as evidence in this cause.

Dated, &c.

G. H. attorney,
[for Plaintiff *or* Defendant.]

To E. F., Attorney,
[or Agent for Defendant *or* Plaintiff.]

[Here describe the documents, the manner of doing which may be as follows.].

ORIGINALS.

Description of the Documents.	Date.
Deed of Covenant between A. B. and C. D. first part, and E. F. second part - - -	1st January, 1828.
Indenture of Lease from A. B. to C. D. - -	1st February, 1828.
Indenture of Release between A. B. and C. D. first part, &c. - - - - - -	2d February, 1828.
Letter, defendant to plaintiff - - - - -	1st March, 1828.
Policy of Insurance on Goods by ship Isabella on voyage from Oporto to London - - -	3d December, 1827.
Memorandum of agreement between C. D. Captain of said ship, and E. F. - - - - -	1st January, 1828.
Bill of Exchange for £100 at three months, drawn by A. B. on and accepted by C. D. indorsed by E. F. and G. H. - - - - - -	1st May, 1829.

COPIES.

Description of Documents.	Date.	Original or Duplicate, served, sent, or delivered, when, how, and by whom.
Register of Baptism of A. B. in the Parish of X. - - -	1st January, 1808.	
Letter, Plaintiff to Defendant -	1st February, 1828.	Sent by General Post, 2d February, 1828.
Notice to produce Papers -	1st March, 1828.	Served 2d March, 1828, on Defendant's Attorney by E. F. of
Record of a judgment of the Court of King's Bench, in an action I. S. *v.* I. N. - - - - -	Trinity Term, 10th Geo 4th	
Letters Patent of King Charles II. in the Rolls Chapel - - - -	1st January, 1680.	

party requiring such admission, may call on the party required, by summons, to show cause before a judge, why he should not consent to such admission; or in case of refusal, be subject to pay the costs of proof. And unless the party required shall expressly consent to make such admission, the judge shall, if he think the application reasonable, make an order, that the costs of proving any document specified in the notice, which shall be proved at the trial to the satisfaction of the judge or other presiding officer, certified by his indorsement thereon, shall be paid by the party so required, whatever may be the result of the cause.

Provided that if the judge shall think the application unreasonable, he shall indorse the summons accordingly.

Provided also, that the judge may give such time for inquiry or examination of the documents, intended to be offered in evidence, and give such directions for inspection and examination, and impose such terms upon the party requiring the admission, as he shall think fit.

If the party required shall consent to the admission, the judge shall order the same to be made.

No costs of proving any written or printed document shall be allowed to any party, who shall have adduced the same in evidence on any trial, unless he shall have given such notice as aforesaid, and the adverse party shall have refused or neglected to make such admission, or the judge shall have indorsed upon the summons that he does not think it reasonable to require it.

A judge may make such order as he may think fit respecting the costs of the application and the costs of the production and inspection; and in the absence of a special order, the same shall be costs in the cause.

THOS. DENMAN.
N. C. TINDAL.
LYNDHURST.
J. BAYLEY.
J. A. PARK.
J. LITTLEDALE.
S. GASELEE.
J. VAUGHAN.
J. PARKE.
W. BOLLAND.
J. W. BOSANQUET.
W. E. TAUNTON.
E. H. ALDERSON.
J. PATTESON.
J. GURNEY.

ADDITIONAL RULES.

In consequence of the authority conferred by 3 & 4 Wm. IV. c 42, on any eight or more of the judges of the superior courts of common law, at Westminster, to make such alterations in the mode of pleading in the said Courts, and in the mode of entering and transcribing pleadings, judgments, and other proceedings in actions at law, and such regulations as to the payment of costs, and otherwise, for carrying into effect the said alterations, as to them might seem expedient; which rules, orders, and regulations are to be laid before both houses of parliament, but after that time should be binding and obligatory on the said Courts, and all other courts of common law, and be of the like force and effect, as if the provisions contained therein had been expressly enacted by parliament.

Provided, that no such rule or order should have the effect of depriving any person of the power of pleading the general issue, and of giving the special matter in evidence in any case wherein he then was or thereafter should be entitled so to do by virtue of any act of parliament then or thereafter to be in force.

It is therefore ordered, that from and after the first day of Easter Term next (1834) inclusive, unless parliament shall in the mean time otherwise enact, the following rules and regulations, made pursuant to the said statute, shall be in force:—

First—GENERAL RULES & REGULATIONS.

I. Every pleading, as well as the declaration, shall be entitled of the day of the month and year when the same was pleaded, and shall bear no other time or date; and every declaration, and other pleading, shall also be entered on the record made up for trial, and on the judgment roll, under the date of the day of the month, and year, when the same respectively took place, and without reference to any other time or date, unless otherwise specially ordered by the Court or a judge.

II. No entry of continuances by way of imparlance,

curia advisare vult, vicecomes non misit breve, or otherwise, shall be made upon any record or roll whatever, or in the pleadings, except the *jurata ponitur in respectu*, which is to be retained.

Provided that such regulation shall not alter or affect any existing rules of practice as to the times of proceeding in the cause.

Provided also, that in all cases in which a plea *puis darrein continuance*, is now by law pleadable in *Banc* or at *Nisi Prius*, the same defence may be pleaded, with an allegation that the matter arose after the last pleading, or the issuing of the jury process, as the case may be.

Provided also, that no such plea shall be allowed, unless accompanied by an affidavit, that the matter thereof arose within eight days next before the pleading of such plea, or unless the Court, or a judge, shall otherwise order.

III. All judgments, whether interlocutory or final, shall be entered of record, of the day, of the month, and year, whether in term or vacation, when signed, and shall not have relation to any other day.

Provided that it shall be competent for the Court or a judge, to order a judgment to be entered *nunc pro tunc*.

IV. No entry shall be made on record of any warrants of attorney to sue or defend.

V. And whereas by the mode of pleading hereinafter prescribed, the several disputed facts, material to the merits of the case, will, before the trial, be brought to the notice of the respective parties, more distinctly than heretofore; and by the said act of the 3 & 4 Wm. IV. c. 42, s. 23, the powers of amendment at the trial, in cases of variance, in particulars not material to the merits of the case, are greatly enlarged.

Several counts shall not be allowed, unless a distinct subject-matter of complaint is intended to be established in respect of each; nor shall several pleas, or avowries, or cognizances, be allowed, unless a distinct ground of answer or defence is intended to be established in respect of each.

Therefore, counts founded on one and the same principal matter of complaint, but varied in statement, description, or circumstances only, are not to be allowed.

Ex. gr. Counts founded upon the same contract, described in one as a contract without a condition, and in another, as a contract with a condition, are not to be allowed, for they are founded on the same subject-matter

of complaint, and are only variations in the statement of one and the same contract.

So counts for not giving, or delivering, or accepting, a bill of exchange, in payment, according to the contract of sale, for goods sold and delivered, and for the price of the same goods, to be paid in money, are not to be allowed.

So counts for not accepting and paying for goods sold, and for the price of the same goods, as goods bargained and sold, are not to be allowed.

But counts upon a bill of exchange or promissory note, and for the consideration of the bill or note, in goods, money, or otherwise, are to be considered as founded on distinct subject-matters of complaint, for the debt and the security are different contracts; and such counts are to be allowed.

Two counts, upon the same policy of insurance, are not to be allowed.

But a count upon a policy of insurance, and a count for money had and received, to recover back the premium, upon a contract implied by law, are to be allowed.

Two counts on the same charter-party are not to be allowed.

But a count for freight upon a charter-party, and for freight *pro ratâ itineris*, upon a contract implied by law, are to be allowed.

Counts upon a demise, and for use and occupation of the same land, for the same time, are not to be allowed.

In actions of tort for misfeasance, several counts for the same injury, varying the description of it, are not to be allowed.

In the like actions for nonfeasance, several counts, founded on varied statements of the same duty, are not to be allowed.

Several counts in trespass, for acts committed at the same time and place, are not to be allowed.

Where several debts are alleged in *indebitatus assumpsit* to be due in respect of several matters—*ex. gr.* for wages, work and labour as a hired servant, work and labour generally, goods sold and delivered, goods bargained and sold, money lent, money paid, money had and received, and the like; the statement of each debt is to be considered as amounting to a several count, within the meaning of the rule, which forbids the use of several counts, though one promise to pay only is alleged, in consideration of all the debts.

Provided that a count for money due on an account stated, may be joined with any other count for a money demand, though it may not be intended to establish a distinct subject-matter of complaint, in respect of each of such counts.

The rule which forbids the use of several counts, is not to be considered as precluding the plaintiff from alleging more breaches than one of the same contract, in the same count.

Ex. gr. Pleas, avowries, and cognizances, founded on one and the same principal matter, but varied in statement, description, or circumstances only, (and pleas in bar in *replevin* are within the rule), are not to be allowed.

Ex. gr. Pleas of *solvit ad diem*, and of *solvit post diem*, are both pleas of payment, varied in the circumstance of time only, and are not to be allowed.

But pleas of payment, and of accord and satisfaction, or of release, are distinct, and are to be allowed.

Pleas of an agreement to accept the security of A. B. in discharge of the plaintiff's demand, and of an agreement to accept the security of C. D. for the like purpose, are also distinct, and to be allowed.

But pleas of an agreement to accept the security of a third person, in discharge of the plaintiff's demand, and of the same agreement, describing it to be an agreement to forbear for a time, in consideration of the same security, are not distinct; for they are only variations in the statement of one and the same agreement, whether more or less extensive, in consideration of the same security, and not to be allowed.

In trespass *quare clausum fregit*, pleas of soil, and freehold of the defendant in the *locus in quo*, and of the defendant's right to an easement there; pleas of right of way, of common of pasture, of common of turbary, and of common of estovers, are distinct, and are to be allowed.

But pleas of right of common, at all times of the year, and of such right at particular times, or in a qualified manner, are not to be allowed.

So pleas of a right of way over the *locus in quo*, varying the *termini*, or the purposes, are not to be allowed.

Avowries for distress for rent, and for distress for damage feasant, are to be allowed.

But avowries for distress for rent, varying the amount of rent reserved, or the times at which the rent is payable, are not to be allowed.

The examples in this and other places specified, are given

as some instances only of the application of the rules to which they relate; but the principles contained in the rules are not to be considered as restricted by the examples specified.

VI. Where more than one count, plea, avowry, or cognizance, shall have been used, in apparent violation of the preceding rule, the opposite party shall be at liberty to apply to a judge, suggesting that two or more of the counts, pleas, avowries, or cognizances, are founded on the same subject-matter of complaint, or ground of answer, or defence, for an order that all the counts, pleas, avowries, or cognizances, introduced in violation of the rule, be struck out, at the cost of the party pleading; whereupon the judge shall order accordingly, unless he shall be satisfied, upon cause shown, that some distinct subject-matter of complaint is *bona fide* intended to be established, in respect of each of such counts, or some distinct ground of answer or defence in respect of each of such pleas, avowries, or cognizances; in which case he shall indorse upon the summons, or state in his order, as the case may be, that he is so satisfied, and shall also specify the counts, pleas, avowries, or cognizances, mentioned in such application, which shall be allowed.

VII. Upon the trial where there is more than one count, plea, avowry, or cognizance upon the record, and the party pleading fails to establish a distinct subject-matter of complaint, in respect of each count, or some distinct ground of answer or defence, in respect of each plea, avowry, or cognizance, a verdict and judgment shall pass against him, upon each count, plea, avowry, or cognizance, which he shall have so failed to establish; and he shall be liable to the other party, for all the costs occasioned by such count, plea, avowry, or cognizance, including those of the evidence, as well as those of the pleadings. And, further, in all cases in which an application to a judge has been made under the preceding rule, and any count, plea, avowry, or cognizance allowed as aforesaid, upon the ground that some distinct subject-matter of complaint was *bona fide* intended to be established at the trial, in respect of each count so allowed, or some distinct ground of answer or defence in respect of each plea, avowry, or cognizance so allowed, if the Court or judge before whom the trial is had, shall be of opinion, that no such distinct subject-matter of complaint was *bona fide* intended to be established, in respect of each count so allowed, or no such distinct ground of answer or defence in respect of each plea, avowry, or cognizance so allowed, and shall

so certify before final judgment, such party so pleading shall not recover any costs upon the issue or issues upon which he succeeds, arising out of any count, plea, avowry, or cognizance, with respect to which the judge shall so certify.

VIII. The name of a county shall in all cases be stated in the margin of a declaration, and shall be taken to be the *venue* intended by the plaintiff, and no *venue* shall be stated in the body of the declaration, or in any subsequent pleading.

Provided, that in cases where local description is now required, such local description shall be given.

IX. In a plea or subsequent pleading intended to be pleaded, in bar of the whole action generally, it shall not be necessary to use any allegation of *actionem non*, or to the like effect, or any prayer of judgment; nor shall it be necessary in any replication or subsequent pleading intended to be pleaded in maintenance of the whole action, to use any allegation of "*precludi non*," or to the like effect, or any prayer of judgment; and all pleas, replications, and subsequent pleadings, pleaded without such formal parts as aforesaid, shall be taken, unless otherwise expressed, as pleaded respectively in bar of the whole action, or in maintenance of the whole action. Provided, that nothing herein contained shall extend to cases where an *estoppel* is pleaded.

X. No formal defence shall be required in a plea; and it shall commence as follows: "The said defendant by his attorney" (or "in person, &c.") "says that, &c."

XI. It shall not be necessary to state, in a second or other plea or avowry, that it is pleaded by leave of the Court, or according to the form of the statute; or to that effect.

XII. No protestation shall hereafter be made in any pleading; but either party shall be entitled to the same advantage in that or other actions, as if a protestation had been made.

XIII. All special traverses, or traverses with an inducement of affirmative matter, shall conclude to the country.

Provided, that this regulation shall not preclude the opposite party from pleading over to the inducement, when the traverse is immaterial.

XIV. The form of a demurrer shall be as follows— "The said defendant by his attorney," (or

"in person," &c., or "plaintiff," "says that the declaration (or plea, &c.,) is not sufficient in law," shewing the special causes of demurrer, if any.

The form of a joinder in demurrer shall be as follows—"The said plaintiff (or defendant) says, that the declaration (or "plea," &c.,) is sufficient in law."

XV. The entry of proceedings on the record for trial, or on the judgment roll, (according to the nature of the case,) shall be taken to be, and shall be, in fact, the first entry of the proceedings in the cause, or of any part thereof, upon record, and no fees shall be payable in respect of any prior entry made, or supposed to be made, on any roll or record whatever.

XVI. No fees shall be charged in respect of more than one issue by any of the officers of the Court, or of any judge at the assizes, or any other officer, in any action of assumpsit, or in any action of debt on simple contract, or in any action on the case.

XVII. When money is paid into court, such payment shall be pleaded in all cases, and as near as may be in the following form, *mutatis mutandis*,—

C. D. } The day of
ats. }
A. B. } The defendant by

his attorney, (or "in person," &c.) says that the plaintiff ought not further to maintain his action, because the defendant now brings into court the sum of £ , ready to be paid to the plaintiff. And the defendant further says that the plaintiff has not sustained damages (*or in actions of debt*, "that he is not indebted to the plaintiff,") to a greater amount than the said sum, &c. in respect of the cause of action in the declaration mentioned, and this he is ready to verify,—wherefore he prays judgment if the plaintiff ought further to maintain his action."

XVIII No rule or judge's order to pay money into Court shall be necessary, except under the 3 and 4 Wm IV. c. 42, s. 21, but the money shall be paid to the proper officer of each Court, who shall give a receipt for the amount in the margin of the plea, and the said sum shall be paid out to the plaintiff on demand.

XIX. The plaintiff, after the delivery of a plea of payment of money into Court, shall be at liberty to reply to the same, by accepting the sum so paid into Court in full

satisfaction and discharge of the cause of action, in respect of which it has been paid in, and he shall be at liberty in that case to tax his costs of suit, and in case of non-payment thereof within forty-eight hours, to sign judgment for his costs of suit so taxed; or the plaintiff may reply "that he has sustained damages (or "that the defendant is indebted to him" as the case may be,) to a greater amount than the said sum," and in the event of an issue thereon being found for the defendant, the defendant shall be entitled to judgment and his costs of suit.

XX. In all cases under the 3 and 4 Wm. IV. c. 42, s. 10, in which, after a plea in abatement of the non-joinder of another person, the plaintiff shall, without having proceeded to trial on an issue thereon, commence another action against the defendant or defendants in the action in which such plea in abatement shall have been pleaded, and the person or persons named in such plea in abatement as joint contractors; the commencement of the declaration shall be in the following form:—

"*(Venue.)* A. B., by E. F. his attorney, (or, "in his own proper person," &c.) complains of C. D. and G. H., who have been summoned to answer the said A. B., and which said C. D. has heretofore pleaded in abatement the non-joinder of the said G. H., &c. (the same form to be used *mutatis mutandis* in cases of arrest or detainer.)

XXI. In all actions by and against assignees of a bankrupt or insolvent, or executors or administrators, or persons authorised by act of parliament to sue or be sued as nominal parties, the character in which the plaintiff or defendant is stated on the record to sue or be sued, shall not in any case be considered as in issue, unless specially denied.

PLEADINGS IN PARTICULAR ACTIONS.

1.—*Asssumpsit.*

In all actions of assumpsit, except on bills of exchange and promissory notes, the plea of non-assumpsit shall operate only as a denial in fact of the express contract or promise alleged, or of the matters of fact, from which the contract or promise alleged may be implied by law.

Ex. gr. In an action on a warranty, the plea will operate as a denial of the fact of the warranty having been given, upon the alleged consideration, but not of the

breach; and in an action on a policy of insurance, of the subscription to the alleged policy by the defendant, but not of the interest, of the commencement of the risk, of the loss, or of the alleged compliance with warranties.

In actions against carriers and other bailees, for not delivering, or not keeping goods safe, or not returning them on request, and in actions against agents for not accounting, the plea will operate as a denial of any express contract to the effect alleged in the declaration, and of such bailment or employment as would raise a promise in law to the effect alleged, but not of the breach.

In an action of *indebitatus assumpsit* for goods sold and delivered, the plea of non-assumpsit will operate as a denial of the sale and delivery in point of fact; in the like action for money had and received, it will operate as a denial both of the receipt of the money and the existence of those facts which make such receipt by the defendant, a receipt to the use of the plaintiff.

II. In all actions upon bills of exchange and promissory notes, the plea of non-assumpsit shall be inadmissible. In such actions, therefore, a plea in denial must traverse some matter of fact; *e. g.* the drawing or making, or indorsing, or accepting, or presenting, or notice of dishonour of the bill or note.

III. In every species of assumpsit, all matters in confession and avoidance, including not only those by way of discharge, but those which show the transaction to be either void or voidable in point of law, on the ground of fraud or otherwise, shall be specially pleaded. *Ex. gr.* infancy—coverture—release—payment—performance—illegality of consideration either by statute or common law—drawing, indorsing, accepting, &c., bills or notes by way of accommodation—set off—mutual credit—unseaworthiness—misrepresentation—concealment—deviation—and various other defences must be pleaded.

IV. In actions on policies of assurance, the interest of the assured may be averred thus,—"That A., B., C., and D., or some or one of them, were or was interested," &c.; and it may also be averred, "that the insurance was made for the use and benefit, and on the account of the person or persons so interested."

2.—*In Covenant and Debt.*

I. In debt on speciality or covenant, the plea of *non est factum* shall operate as a denial of the execution of the deed in point of fact only, and all other defences shall be

specially pleaded, including matters which make the deed absolutely void, as well as those which make it voidable.

II. The plea of "*nil debet*" shall not be allowed in any action.

III. In actions of debt on simple contract, other than on bills of exchange and promissory notes, the defendant may plead, that "he never was indebted in manner and form as in the declaration alleged," and such plea shall have the same operation, as the plea of non-assumpsit, in *indebitatus assumpsit*, and all matters in confession and avoidance shall be pleaded specially, as above directed in actions of assumpsit.

IV. In other actions of debt, in which the plea of *nil debet* has been hitherto allowed, including those on bills of exchange and promissory notes, the defendant shall deny specifically some particular matter of fact alleged in the declaration, or plead specially in confession and avoidance.

3.— *Detinue.*

The plea of *non detinet* shall operate as a denial of the detention of the goods by the defendant, but not of the plaintiff's property therein; and no other defence than such denial shall be admissible under that plea.

4.- *In Case.*

I. In actions on the case, the plea of not guilty shall operate as a denial only of the breach of duty, or wrongful act alleged to have been committed by the defendant, and not of the facts stated in the inducement; and no other defence than such denial shall be admissible under that plea; all other pleas in denial shall take issue on some particular matter of fact alleged in the declaration. *Ex. gr.*—In an action on the case for a nuisance to the occupation of a house, by carrying on an offensive trade, the plea of not guilty will operate as a denial only that the defendant carried on the alleged trade in such a way, as to be a nuisance to the occupation of the house, and will not operate as a denial of the plaintiff's occupation of the house. In an action on the case for obstructing a right of way, such plea will operate as a denial of the obstruction only, and not of the plaintiff's right of way; and in an action for converting the plaintiff's goods, the conversion only and not the plaintiff's title to the goods. In an action of slander of the plaintiff in his office, profession, or trade, the plea of not guilty will operate to the same extent precisely, as at present, in denial of speaking the

words, of speaking them maliciously, and in the sense imputed, and with reference to the plaintiff's office, profession, or trade, but it will not operate as a denial of the fact of the plaintiff's holding the office, or being of the profession or trade alleged. In actions for an escape, it will operate as a denial of the neglect or default of the sheriff, or his officers, but not of the debt, judgment, or preliminary proceedings. In this form of action against a carrier, the plea of not guilty will operate as a denial of the loss or damage, but not of the receipt of the goods by the defendant as a carrier for hire, or of the purpose for which they were received.

II. All matters in confession and avoidance shall be pleaded specially, as in actions of assumpsit.

5.—*In Trespass.*

I. In actions of trespass, *quare clausum fregit*, the close or place in which, &c. must be designated in the declaration, by name or abuttals, or other description, in failure whereof the defendant may demur.

II. In actions of trespass, *quare clausum fregit*, the plea of not guilty shall operate as a denial that the defendant committed the trespass alleged, in the place mentioned, but not as a denial of the plaintiff's possession, or right of possession, of that place, which, if intended to be denied, must be traversed specially.

III. In actions of *trespass de bonis asportatis*, the plea of not guilty shall operate as a denial of the defendant having committed the trespass alleged, by taking or damaging the goods mentioned, but not of the plaintiff's property therein.

IV. Where, in an action of trespass *quare clausum fregit*, the defendant pleads a right of way, with carriages and cattle, and on foot, in the same plea, and issue is taken thereon, the plea shall be taken distributively; and if a right of way, with cattle or on foot only, shall be found by the jury, a verdict shall pass for the defendant, in respect of such of the trespasses proved, as shall be justified by the right of way so found, and for the plaintiff, in respect of such of the trespasses as shall not be so justified.

V. And where, in an action of trespass, *quare clausum fregit*, the defendant pleads a right of common of pasture, for divers kinds of cattle, *ex. gr.* horses, sheep, oxen, and cows, and issue is taken thereon; if a right of common, for some particular kind of commonable cattle only, be found by the jury, a verdict shall pass for the defendant in re-

spect of such of the trespasses proved as shall be justified by the right of common so found, and for the plaintiff in respect of the trespasses, which shall not be so justified.

VI. And in all actions in which such right of way or common as aforesaid, or other similar right is so pleaded, that the allegations as to the extent of the right are capable of being construed distributively, they shall be taken distributively.

Provided nevertheless, that nothing contained in the 5th, 6th, or 7th, of the above-mentioned general rules and regulations, or in any of the above-mentioned rules or regulations, relating to pleading in particular actions, shall apply to any case, in which the declaration shall bear date before the first day of Easter Term, 1834.

Issues, Judgments, and other Proceedings, in Actions, commenced by Process under 2d William IV., c. 39, shall be in the several Forms in the Schedule hereunto annexed, or to the like effect, mutatis mutandis: *Provided, that in case of non-compliance, the Court or a Judge may give leave to amend.*

Form of an Issue in the King's Bench, Common Pleas, or Exchequer.

In the King's Bench [*or* Common Pleas, *or* Exch. of Pleas.]
The [*date of declaration,*] day of in the year of our Lord 18

Venue. A. B. by E. F. his attorney, (or in his own proper person, or by E. F., who is admitted by the court here to prosecute for the said A. B., who is an infant, within the age of twenty-one years, as the next friend of the said A. B., as the case may be) complains of C. D. who has been summoned to answer the said A. B.; (or arrested, or detained in custody) by virtue, or served with a copy (as the case may be,) of a writ issued on [*date of first writ*] the day of in the year of our Lord 18 out of the court of our Lord the king, before the king himself, at Westminster, (or out of the court of our Lord the king, before his justices at Westminster, or out of the court of our Lord the king, before the barons of his exchequer, at Westminster, as the case may be,) for that

[Copy the declaration from these words to the end, and the plea and subsequent pleadings to the joinder of issue.]

Thereupon the sheriff is commanded that he cause to come

here on the day of twelve, &c. by whom, &c. and who neither, &c. to recognize, &c., because as well, &c.

2. *Form of Nisi Prius Record in the King's Bench, Common Pleas, or Exchequer.*

The *placitas* are to be omitted. Copy the issue to the end of the award of the venire, and proceed as follows:

Afterwards, on the [*teste of distringas, or habeas corpora,*] day of in the year the jury between the parties aforesaid, is respited here until the [*return day of distringas, or habeas corpora,*] day of unless shall first come on the [*first day of sittings, or commission day of assizes,*] day of at according to the form of the statute in such case made and provided for default of the jurors, because none of them did appear. Therefore let the sheriff have the bodies of the said jurors accordingly.

The postea is to be in the usual form.

3. *Form of Judgment for the Plaintiff in assumpsit.*

Copy the issue to the end of the award of the venire, and proceed as follows:

Afterwards the jury between the parties is respited until the [*return of distringas, or habeas corpora,*] day of unless shall first come on the [*day of sittings, or Nisi Prius,*] day of at according to the form of the statute in that case made and provided for default of the jurors, because none of them did appear.

Afterwards, on the [*day of signing final judgment*] day of come the parties aforesaid, by their respective attorneys aforesaid, (or, as the case may be,) and before whom the said issue was tried, hath sent hither his record, had before him, in these words:

(*Copy postea.*)

Therefore it is considered that the said A. B. do recover against the said C. D., his said damages, costs, and charges, by the jurors aforesaid, in form aforesaid, assessed; and also for his costs and charges, by the Court here adjudged, of increase to the said A. B., with his assent, which said damages, costs, and charges, in the whole amount to £ and the said C. D. in mercy, &c.

4. *Form of the Issue, when it is directed to be tried by the Sheriff.*

After the joinder of issue, proceed as follows:

And forasmuch as the sum ought to be recovered in this suit, and indorsed on the said writ of summons, does not exceed twenty pounds, hereupon on the [*teste of writ of trial*] day of in the year , pursuant to the statute in that case made and provided, the sheriff (or the judge of being a court of record for the recovery of debt in the said county, as the case may be,) is commanded that he summon twelve, &c., who neither, &c., who shall be sworn truly to try the issue above joined between the parties aforesaid, and that he proceed to try such issue accordingly, and when the same shall have been tried, that he make known to the Court here, what shall have been done by virtue of the writ of our lord the king, to him in that behalf directed, with the finding of the jury thereon, indorsed on the day of &c.

5. *Form of Writ of Trial.*

William the Fourth, by, &c.

To the sheriff of our county of [or to the judge of being a court of record for the recovery of debt, in our county of , as the case may be.]

Whereas A. B., in our Court, before us at Westminster [*or* in our Court before our justices at Westminster, *or* in our Court before the barons of our Exchequer, at Westminster, as the case may be,] on the [*date of first writ of summons*] day of last, impleaded C. D. in an action on promises (*or* as the case may be.)

For that, whereas one, &c. [here recite the declaration, as in a writ of inquiry,] and thereupon he brought suit.

And whereas the defendant, on the day of last, by his attorney, (*or* as the case may be) came into our said Court and said [here recite the pleas and pleadings to the joinder of issue,] and the plaintiff did the like. And whereas the sum sought to be recovered in the said action, and indorsed on the writ of summons therein, does not exceed £20, and it is fitting that the issue above joined, should be tried before you the said sheriff of (*or* judge, as the case may be.) We therefore, pursuant to the statute in such case made and provided, command you, that you do summon twelve free and lawful men of your county, duly qualified according to law, who are in no wise akin to the plaintiff or to the defendant, who shall be sworn, truly to try the said issue joined between the parties aforesaid, and that you proceed to try such

issue accordingly, and when the same shall have been tried in manner aforesaid, We command you, that you make known to us at Westminster (*or* to our justices at Westminster, or to the barons of our said exchequer, as the case may be,) what shall have been done by virtue of this writ, with the finding of the jury hereon indorsed, on the day of next.

Witness at Westminster the day of in the year of our reign.

6 *Form of Indorsement thereon of the Verdict*

Afterwards, on the [*day of trial*] day of in the year , before me, sheriff of the county of (or judge of the court of ,) came as well the within named plaintiff, as the within named defendant, by their respective attorneys within named,) or as the case may be,) and the jurors of the jury by me duly summoned as within commanded, also came, and being duly sworn to try the said issue within mentioned, on their oath said, that

7 *Form of Indorsement thereon, in case a Nonsuit takes place.*

[After the words "duly sworn to try the issue within mentioned," proceed as follows]—

And were ready to give their verdict in that behalf, but the said A. B. being solemnly called, came not, nor did he further prosecute his said suit against the said C. D.

8. *Form of Judgment for the Plaintiff, after Trial by the Sheriff.*

[Copy the issue, and then proceed as follows]—

Afterwards, on the [*day of signing judgment,*] day of in the year , came the parties aforesaid, by their respective attorneys aforesaid, (or as the case may be), and the said sheriff (or judge, as the case may be,) before whom the said issue came on to be tried, hath sent hither the said last mentioned writ, with an indorsement thereon, which said indorsement is in these words, to wit:

[*Copy the indorsement.*]

Therefore it is considered, &c. (in the same form as before.)

PRACTICE BEFORE SHERIFF ON WRIT OF TRIAL FOR DEBTS NOT EXCEEDING £20.

The delay and expense attending the proceedings in the superior courts, has induced the legislature, by 8 and 9 Wm. IV. c. 11, to enact, that actions for debt, under £20, may be tried before the sheriff of the county.

The proceedings under that statute are as follow:— A writ of summons is issued out of the King's Bench, Common Pleas, or Exchequer, indorsed that the plaintiff claims of the defendant £ for debt and £ for costs; and if the amount is paid to the plaintiff or his attorney within four days from the service of the writ, proceedings must be stayed.

On being personally served, if the defendant does not pay the debt and costs as above, he must within eight days enter an appearance to the writ in the court from which it issues; or the plaintiff, upon filing an affidavit of *personal* service, may enter an appearance for the defendant.

If the defendant appears the plaintiff delivers to defendant's attorney, a declaration either in debt or *assumpsit*, with a particular of his demand annexed; then enters a rule for defendant to plead, and demands a plea: or if the plaintiff appear for the defendant, the plaintiff files his declaration with the proper officer of the court, and serves a notice thereof and a particular of demand upon the defendant, and enters a rule for defendant to plead in four days, if he lives within twenty miles of London, and in eight days, if at a greater distance.

The defendant, in debt, pleads the general issue *nil debet*, viz. that he owes nothing: if in assumpsit, non-assumpsit, or that he made no promise. If he has a *set-off* he must serve the plaintiff's attorney with notice of his claim; or he may also plead any special matter of defence; but (after Easter 1834,) he must set out the *real* matter of defence, and that on which he means to rely, according to the new rules.

The plaintiff's attorney must obtain a judge's order for the particulars of a set-off, if required, upon which order the particular must be delivered to him. The declaration and plea must then be copied; and the plaintiff's attorney joins issue by adding to the end of the plea what is termed the *similiter*, viz. the words "and the plaintiff doth the

like." The plaintiff's attorney then delivers this issue to the attorney of the defendant, and an application is made by the plaintiff's attorney to a judge for an order that the issue should be tried before the sheriff of the county stated in the margin of the declaration. When the judge has made the order, the writ is issued; and notice of trial must be given by the plaintiff's attorney to the defendant's attorney, eight days if the defendant lives within forty miles of London, and fourteen days if beyond that distance. If the action is not in London or Middlesex, the notice must be ten days before trial.

On the day fixed, the cause is tried by the under-sheriff, and the verdict of the jury, or nonsuit of the plaintiff, is recorded on the back of the writ of trial. In *four* days from the return the costs are taxed by the officer of the court, who marks the amount, which is called signing judgment; and an execution, by *fieri facias* against goods or chattels, or a *capias ad satisfaciendum* against the body, is then issued to levy the debt, costs, and expenses.

The writ of summons only relates to serviceable process, and no construction can extend it to bailable process. Parties in any action, after issue joined by consent, and by order of any of the superior courts, may state the facts of the case, in the form of a special case, for the opinion of the Court, and agree that a judgment shall be entered for the plaintiff or defendant by commission, or of *nolle prosequi*, immediately after the decision of the case, or otherwise as the Court may think fit; and judgment shall be entered up accordingly.

Where any writ of trial shall be made or sued out to be executed in the city of London, or in the county of Middlesex, the writ must be left at the office of the sheriff before whom such writ is intended to be executed, the day before the execution thereof.

It is not necessary to issue more than two summonses for attendance before a judge upon the same matter; and the party summoning is entitled to an order on the return of the second summons, unless cause is shown to the contrary. Of rules, orders and notices, service made *before* nine at night is deemed good, but not after that hour.

Form of Summons.

Why, as the debt indorsed on the writ of summons, and sought to be recovered, does not exceed £20, and as the trial will not involve any difficult question of fact or law, the issue joined should not be tried before the sheriff of

the county of , and why a writ should not issue out of his Majesty's Court of , at Westminster, directed to such sheriff, commanding him to try such issue, by a jury to be summoned by him; and to return such writ, with the finding of the jury indorsed thereon, to the said Court, pursuant to 3 & 4 Wm. IV. c. 42, on the day of instant (*or* next).

King's Bench, in term, pay 1*s.*; vacation, 2*s.* Common Pleas and Exchequer, 2*s.*

Form of Affidavit of Service.

G. H., clerk to Mr. E. F., attorney for the defendant in this cause, and residing at , maketh oath and saith, that he this deponent did, on the day of (instant *or* last), personally serve Mr. J. K., who acts as the attorney or agent of the plaintiff in this cause, with a true copy of the first summons hereunto annexed. And this deponent further saith, that he did, on the day of (instant *or* last), personally serve the said Mr. J. K. with a true copy of the second summons hereunto annexed. And this deponent further saith, that he did duly attend the said several summonses at the times therein respectively mentioned, at the chambers of the chief justice, chief baron, [*or* the honourable justice or baron .] in Serjeant's Inn, Chancery-lane, London, for the space of half an hour at each of the said several times, but that the plaintiff's attorney or agent did not, nor did any other person or persons on his or their behalf, attend the said several summonses, or either of them, on either of the times aforesaid, to the knowledge or belief of this deponent.

Swearing.

King's Bench, term time, 1*s.*; vacation, 2*s.* Common Pleas and Exchequer, 2*s.*; private house, servant, 2*s.* 6*d.*

Form of Affidavit.

In the King's Bench [*or* Common Pleas, *or* Exch. of Pleas.]
Between A. B. and C. D.

G. H., common law managing clerk to Mr. E. F., of New Inn, Strand, in the county of Middlesex, attorney for the said defendant, maketh oath and saith, that this is an action of assumpsit (*or* debt), and that the sum sought to be recovered herein and indorsed upon the writ of summons, is £ and no more; that issue was duly

joined between the said parties on the day of last, and that in the belief of this deponent the trial of this cause will not involve any difficult question of fact or law: that the plaintiff's demand, delivered herein, are as follows:—(*copy same, and of "set-off," if so.*)

Form of Order.

Wilson *v.* Moore.

Upon reading the Affidavit of J. T., I do order, that as the debt indorsed on the writ of summons and sought to be recovered does not exceed £20, and as the trial will not involve any difficult question of fact or law, the issue joined be tried before the sheriff of the county of Middlesex, and (*as in the summons.*)

Dated the 12th day of September, 1833.

J. WILLIAMS.

Pay for order, 2s. For filing each affidavit, 2s.

Upon issue being joined, if plaintiff does not, the defendant may apply to a judge for this writ, which is done by summons served on the plaintiff's attorney. If plaintiff does not attend to show cause at the return of the second summons, the usual affidavit of service of both, and attendance, must be made.

Form of Notice of Trial

Take notice, that the issue joined in this cause will, pursuant to the statute 3 & 4 Wm. IV. c. 42, s. 17, 18, and the order made on the day of instant, by Mr. Baron Williams, in this cause, be tried before the sheriff of the county of Middlesex, on the day of instant, at eleven o'clock precisely, in the forenoon, at the office of the said sheriff of Middlesex, in Red Lion Square, in the same county, and that the plaintiff will attend by counsel on the trial of the said issue.

Dated the day of 1834.

Form of Subpæna.

William the Fourth, &c.

To A. B. [*here insert the names of the Witnesses.*]

We command you and every of you that, laying aside all and singular businesses and excuses whatsoever, you and every of you be and appear in your proper persons before our sheriff of Middlesex [*or* sheriffs of London *or* otherwise] on the day of instant [*or* next], at by of the clock in the forenoon of the same day, then and there to testify the

truth, according to your knowledge, in a certain cause now depending in our Court before the barons of our Court of Exchequer [*or* in the King's Bench, "before us," *or* in the Common Pleas, "before our justices,"] at Westminster, between C. D. plaintiff, and E. F. defendant, in an action on promises [*or* "in an action of debt,"] on the part of the plaintiff, [*or* defendant] in which cause the issue joined between the parties will then and there be tried before the said sheriff [*or* sheriffs] and a jury of the country; and this you nor any of you shall in nowise omit, under the penalty upon each and every of you of £100.

Witness, John Singleton, lord Lyndhurst, at Westminster, the day of in the year 183

King's Bench, signed by signer of writs........................	Sealed at Seal Office.
Common Pleas ——— prothonotaries	

Exchequer, signed at Exchequer office. Get sealed writ from bag-bearer.

Form of Writ of Trial.

William the Fourth, by the grace of God of the United Kingdom of Great Britain and Ireland king, defender of the faith:

To the sheriff of our county of .

Whereas A. B. in our Court before the barons of our Exchequer at Westminster, on the day of last, impleaded C. D. in an action upon promises. For that whereas, &c. (here copy declaration) and thereupon he brought suit; and whereas the defendant on the day of last, by his attorney, came into our said Court and defended the wrong and injury when, &c., and saith that he did not promise in manner or form as the plaintiff hath above complained against him, and of this he puts himself upon the country, and the plaintiff doth the like: and whereas the sum sought to be recovered in the said plea, and indorsed on the writ of summons therein, does not exceed £20, and it is fitting that the issue above joined should be tried before you the sheriff of . We therefore, according to the form of the statute in such case made and provided, command you that you do summon twelve free and lawful men of your county, duly qualified according to law, who are in nowise akin to the plaintiff or to the defendant, who shall

be sworn truly to try the issue above joined between the parties aforesaid, and that you proceed to try such issue accordingly; and when the same shall have been tried in manner aforesaid, we command you that you make known to the barons of our said Exchequer, what you shall have done by virtue of this writ, with the finding of the jury thereon indorsed, on the day of next, that judgment may be given thereupon.

Witness, John Singleton, lord Lyndhurst, at Westminster, the day of , in the year of our reign.

Attorney for plaintiff.
Attorney for defendant.

(By order of the honourable baron)
or
[By rule of Court, dated, &c.]
[*date of issuing of writ.*]

The writ is issued in the same manner as the subpœna.

Form of Indorsement.

In the Exchequer of Pleas.
Writ of trial.—Wilson *v.* Moore.

To be tried before the sheriff of the county of Middlesex, on Tuesday the 24th day of Sept. 1833, at 11 o'clock in the forenoon precisely. J. S.
New Inn.

The forms of notices to produce, to admit copies of records, hand-writings, &c. may be given in the ordinary mode, except that they are to be required "to produce and shew to the sheriff and jury, &c."

BRIEF.

Where counsel are employed a brief is necessary: it is a narration of the circumstances stated accurately and with brevity: the proofs should be detailed in the succession required to instruct counsel how to maintain the case. 1. Title of the Court. 2. Of the Cause. 3. The Pleadings. 4. The Case. 5. The Proofs. 6. Observations on the probable defence (if for the plaintiff); case, (if for the defendant).

Form.

Ingrossment upon foolscap.

Quarter margin.

Title of Court.

{ Between A. B. plaintiff,
and
C. D. defendant.

Writ of summons issued , 183 , in assumpsit.
Debt indorsed, £15.

Middlesex. Declaration states (*as in copy.*)
To plaintiff's damage, £20.

The following particulars of plaintiff's demand were served with declaration.

(*Copy them.*)

Further and better particulars since obtained by defendant.

(*Copy them.*)

Plea: general issue; with notice of set-off.

(*Copy it.*)

The following are the particulars of defendant's set-off.

(*Copy it.*)

Trial before the sheriff under 3 and 4 W. IV. c. 42. s. 17. By order of Mr. Justice Williams

Dated 183—.

The particulars of plaintiff's demand and defendant's set-off are affixed to the writ of trial.

CASE.

(*Place the main facts in one page concisely.*)

PROOFS.

1. The writ of summons.

WITNESSES.

To prove.
(*The facts in order which the witness can prove.*)

(*Leave a quarter margin.*)

Call Mr. E. F. of No.
Westminster.

(Fold the brief, the end with the head, and the shut part with the open, leaving the open part to the right hand, and indorse as follows:)

Title of Court.

Middlesex.

Before the sheriff, under 3 & 4 W. IV. c. 42, s. 17, and order of . Dated 183

A. B. *v.* C. D. } Brief.

For the plaintiff.

Mr. E. F.

Fee,

To be tried at the sheriff's office in Red Lion Square.

First sitting day week 183 , at 11 o'clock precisely.

G. H.

No. , New Inn,

Plaintiff's attorney.

The jury is impannelled and must be qualified as at *Nisi Prius*, and the want of qualification is a good ground of challenge.

New trials may be obtained by application to stay proceedings in the mean time, for the purpose of applying to the court; but a notice of motion to the court is necessary, and this notice must be served two days before the application.

The following is the scale of general charges allowed in trials before the sheriff.

Attendances.

Searching for rule to plead	3s. 4d.
To file affidavit and office copy	
To deliver particulars	
For appointment	
To draw up special rules	
To enter issue	
To sign judgment	
To complete	
On common orders, rules, &c.	
On judge's summons, not opposed	
K. B. Master's rules	

On counsel, common things	6s. 8d.
On counsel, with brief	
On trial	
Special motions	
To bespeak paper or demurrer book	
To pay money into court	
To receive money out of court...............	
To tax costs on judgments, returns on writ of trial, rule to compute references, inquiries and special things	
Summons opposed, special....................	
On motions, before hearing in court	
On trial of cause	£1. 1s.
Argument of special case	

New trial in paper, 13s. 4d. to £1. 1s.

Affidavits.

Common, and oath, 6s.
Special instructions, 6s. 8d.
Drawing, per fol. 1s. (if special.)
Ingrossing, per fol. 4d. (do.)
Of increase, drawing and ingrossing, per fol. 1s.

Pleadings

Drawing declaration, pleas and subsequent pleadings, per fol. 1s.
Issues in fact or law, 8d.
Drawing interlocutory or final judgment, 3s 4d.

Copying.

In agency causes of pleading, per fol. 4d.

Notices.

Of trial, countermand, inquiry, common notices and service, taxing, 4s.
Summons, in term, first vacation, 2s.
Copy and service, 3s. Order, 2s.
Common rules, 5s.

One shilling more served out of town where agent or correspondent resides.

Record, per fol. 6d.
Writ of trial, inquiry, ditto.

Brief.

On trial or inquiry, instructions, 13s. 4d.
Drawing, per brief sheet, 6s. 8d.
Fair copy, 3s. 4d.

Term Fee.

Town, 13s.
Agency within 50 miles, 15s.
Agency above 50 miles, under 100, 18s.
Agency above 100 miles, £1.
Letters, 3s. 6d.

Allowance to Witnesses.

	Town		Country
Travelling expenses, per mile, one way	£0 1 0	..	£0 1 0
Common witnesses as journeymen; Labourers, per day	0 5 0 to 0 7 0	—	0 5 0 to 0 7 6
Tradesmen; Yeomen, farmers	0 5 0 to 0 7 0	—	0 10 0 to 0 15 0
Auctioneers, accountants	0 10 6 to 1 1 0	—	0 10 6 to 1 1 0
Private gentlemen, merchants, bankers, &c. with subpœna	1 1 0	..	1 1 0
Professional men, as attorneys, surgeons, apothecaries, &c.	1 1 0	..	1 1 0
Clerks	0 10 6 to 0 15 0		
Females, according to station.			

ARREST FOR DEBT.

The 7 & 8 Geo. IV. c. 71, sect. 8, makes a very salutary provision respecting arrests for debt. It recites that arrests of the person have been made in many instances under writs sued out by persons not being attorneys or solicitors, and whose places of residence have been unknown, which has been productive of great oppression and vexation; and it enacts that no sheriff, &c. shall grant

any warrant, nor arrest any defendant, upon any process *issued by any plaintiff in his own person*, unless the writ shall, at or before the time of granting the warrant, or of making the arrest, be delivered to such sheriff by some attorney of one of the courts at Westminster, or of the courts of Great Sessions in Wales, or counties palatine, or of the court out of which the writ issued, or by the clerk of such attorney, or an agent authorised by such attorney in writing; and, unless the writ shall be indorsed by such attorney, or clerk, or agent, in the presence of the sheriff, under-sheriff, or other officer having the execution of the process, with the name and place of abode of such attorney.

And by sect. 9, all warrants granted, and all arrests made, contrary to the act, are altogether illegal and void; but this is not to extend to process sued out by an attorney, or other officer of the court, having authority to sue out process in his own name.

And by a rule of the Court of King's Bench, of Hilary Term, 2 and 3 Geo. IV. it is ordered, that the attorney concerned for the plaintiff in the cause, or his agent, shall indorse upon all bailable mesne process, and every writ of attachment, *fieri facias*, and *capias ad satisfaciendum*, the place of abode, and additions of the party against whom the writ is issued, or such other description of him as such attorney or agent may be able to give.

UNIFORMITY OF PRACTICE.—By 3 & 4 Wm. IV. cap. 67, all writs of summons, distringas, capias, and detainer, into Middlesex from the King's Bench, shall be signed, sealed, and issued, and the fees taken thereon by the same persons, and in like manner as other writs issued from that court; and the writ of *venire facias juratores* may be tested on *the day it is issued*, and made returnable forthwith; and the writ of *distringas juratores*, or *habeas corpora juratorum* may be tested either in term or vacation, on a day subsequent to the *teste* of the writ of *venire facias juratores*; and all writs of execution may be tested on the day they are issued, and made returnable immediately after execution thereof; but in *trials at bar*, the writ of *venire facias juratores* must be returnable as before, namely, *some day in term time*.

PROCEEDINGS BY PRISONERS FOR DEBT.

PRISONERS charged with civil actions merely, may have the benefit of the rules of the prison, upon entering into a bond, with two sufficient sureties, as a security to the marshal against escape; and upon paying the marshal also a certain per centage on the amount of the debts for which they are detained. These *rules* are certain limits beyond the walls of the prison, within which prisoners so paying may reside. The rules of the King's Bench extend from Great Lumber Court, in the parish of St. George the Martyr, in the county of Surrey, along the north side of Great Suffolk Street, as far as the Star Brewhouse; and from thence along the north-west side of Gilbert's Lane to the Blackfriar's Road, and across the said road, along the north-west side of Webber Street, to the Half-way house; and from thence along the western side of St. George's Mall, and from the pastry-cook's at the west end thereof, directly across to the lamp-post on the foot-path, near the watch-house facing the Dog and Duck; and along the said foot-path, from the said lamp-post, to another lamp-post on the eastern side of the said road, facing Key's nursery; and then along the whole of the said road, leading by Prospect Place to the Elephant and Castle; and from thence along the eastern side of Newington Causeway, to Great Lumber Court aforesaid. The parish church of St. George the Martyr, and the adjoining church-yard, the house of correction for the county of Surrey, the new gaol, Southwark, the county gaol, and the highways, exclusive of the houses on each side thereof,) leading from the King's Bench prison to the said gaol respectively, are also within the rules; but all taverns, victualling-houses, ale-houses, wine-vaults, houses or places licensed to sell gin, or other spirituous liquors, and places licensed for public entertainments, within the limits, are excluded from the rules, and prisoners entering them will be liable to forfeit the rules. Otherwise, these rules are considered, to all intents, as the prison itself; and if the prisoner go beyond the limits described, the marshal is answerable to the plaintiff as if for an escape, in precisely the same manner as if the defendant had escaped from the prison; and the prisoner is thereby not only deprived of the privilege of residing

within the rules in future, but is liable to an indictment as if for a breach of prison.

Besides the liberty of residing within the rules, the prisoner may, *in term time*, have a *day rule;* that is, a permission from the Court to go *beyond* the rules of the prison, for the purpose of transacting his business, upon application to the marshal, and signing a petition to the Court for that purpose, and paying a fee to the clerk of the day rules.

Even prisoners *within the walls* may also have day rules during term, upon satisfying the marshal that they will return to the prison before *nine* o'clock the same evening.

All prisoners for debt, *in term time*, may petition the Court out of which the process under which they are imprisoned issued, or under whose jurisdiction the prison in which they are confined is; and, in *vacation*, may petition one of the judges of the said Court, or a judge of assize, complaining of any exaction or extortion by any gaoler or other person employed in the keeping, &c. of the prison in which they are confined, or of any other abuse whatsoever committed or done by them in their respective offices; and the Court or judge will hear and determine the complaint in a summary way, and make such order for redressing the abuses complained of, and for punishing the officer, &c. and for making reparation to the parties injured, as they shall think just, together with the costs of such complaint; and such order may be enforced by attachment or otherwise, in the same way as other orders of the Court.

Discharge of a Prisoner by Supersedeas.

If a declaration be not delivered by the plaintiff to a prisoner in custody at his suit, the defendant may be discharged out of custody by *supersedeas*, upon filing common bail, or entering a common appearance. But if a defendant be in custody upon *joint process*, against him and another, and the other has not been arrested, this will be a sufficient cause for refusing the *supersedeas*, provided it appear that the plaintiff is using due diligence to outlaw the other defendant; for, until the other defendant be arrested or outlawed, the plaintiff cannot declare against the one who is in custody. However, in such a case, the plaintiff ought to obtain time to declare, as directed in such cases.

A prisoner who is supersedeable, for want of filing a

bill against him in due time, must not plead to such bill, or he will waive his right to a *supersedeas*.

If the *copy* of the bill be delivered to the prisoner before the bill itself is filed, *the defendant will be entitled to his discharge*. And where the defendant is in the custody of the sheriff, if the affidavit of delivery of the declaration be not filed *before the first day of the term next after such delivery*, the defendant may supersede the action.

In cases of judgment by default, demurrer, or issue upon *nul tiel record*, if the plaintiff do not proceed to final judgment in due time, that is, within three terms, the term in which the copy was delivered being one, the defendant may be discharged by *supersedeas*, or common bail, or entering a common appearance.

If the plaintiff do not charge the defendant in execution in due time, that is, within two terms after the trial, judgment, or render, and notice thereof given respectively, (of which two terms, the term of the trial, judgment, or render, shall be deemed one,) the defendant may, in like manner, be discharged by *supersedeas*. But if the defendant hinder the plaintiff from proceeding, by any legal measures on his part, he is not entitled to his *supersedeas*, if the plaintiff proceed afterwards in due time.

It is a general maxim, that a prisoner *once* supersedeable is *always* so; that is, for instance, if he be supersedeable because a declaration has not been delivered to him in due time, the delivery of a declaration afterwards will not prevent him from being discharged on account of the previous default. There is one exception, however, to this rule, namely, that if the defendant be once charged in execution, he cannot afterwards take advantage of any preceding fault of the plaintiff, provided he had an opportunity, previously to his being charged in execution, of applying for his *supersedeas*. It may be necessary to add, that where a defendant is supersedeable, the plaintiff cannot prevent his discharge by discontinuing the present action, and lodging a fresh detainer against him for the same cause of action; but for a different cause of action, for which the defendant can be holden to bail, perhaps he may. Nor can the plaintiff, after the defendant's discharge, again hold him to bail for the same cause of action.

The mode of obtaining the defendant's discharge in the several cases abovementioned, is as follows:—

If the defendant be in the custody of the marshal, and he is to be discharged upon the ground of the plaintiff's

not having declared against him in *due time*, get a copy of causes from the clerk of the papers at the prison; then take out a summons, requiring the plaintiff's attorney to attend before a judge, to show cause why the defendant should not be discharged, and serve it upon the plaintiff, or his attorney or agent. If the plaintiff's attorney consent to an order, get the consent indorsed on the summons, and the judge will make an order accordingly; or if the plaintiff's attorney show cause, and the cause be not deemed sufficient, the judge will make the order; or, if the attorney do not attend, then, after waiting an hour, make an affidavit of the service of the summons, and of your attendance, and the judge will then make the order. In town causes, this order is absolute in the first instance; but in country causes, it is usually but an order *nisi*, that is, unless cause be shown within a week, or such other short period as the judge shall think reasonable, and which will afterwards be made absolute, if no cause be shown. Upon the order being made, serve a copy of it upon the plaintiff's attorney; file common bail, if the action be by bill, or enter an appearance with the filacer, if the action be by original; and get a certificate from the clerk of the common bails, or filacer, of your having done so; pay 1*s.*; then take this certificate and order to the marshal's office, and the prisoner will thereupon be discharged without a *supersedeas*, upon payment of his fees.

But if the defendant be in the custody of the sheriff, &c. and he is to be discharged upon the ground abovementioned, get from the gaoler a certificate of the causes the defendant is charged with, and make an affidavit of the gaoler's having signed the same. Then take out a summons, and obtain an order as is above directed. Write out the supersedeas, and take it, together with the præcipe and the certificate of the clerk of the common bails abovementioned, if the action be by bill, to the signer of the writs, who will sign the *supersedeas;* pay him 1*s.* 8*d.*; get it sealed and pay 7*d.* But if the action be by original, enter a common appearance with the filacer, and he will make out the *supersedeas;* get it sealed. And, lastly, leave the writ with the gaoler of the prison, who will thereupon discharge the defendant upon payment of his fees.

If the ground for discharging the defendant be that no bill was filed, or that the copy of the bill was delivered before the bill itself was filed, get a certificate from the

clerk of the declarations that no bill was filed against the defendant in his office, or that a bill was filled on such a day; then take out a summons, and proceed as above directed.

If the ground for discharging the defendant be that the plaintiff has not proceeded to trial or execution within due time, proceed as abovementioned to the attendance upon the summons; and if the plaintiff's attorney or agent do not attend, serve him with a *second*, and afterwards with a *third* summons, and attend them respectively as above directed, waiting an hour each time; and if upon the third summons he do not attend, or if he show cause, but the cause be insufficient, or if he indorse a consent upon the summons as abovementioned, the judge will make an order for the defendant's discharge. Then proceed by filing common bail, &c as above directed.

If the defendant be discharged by *supersedeas* for want of proceedings *before* judgment, this does *not* prevent the plaintiff from suing out a *capias ad satisfaciendum*, and taking the defendant in execution, *after he has obtained judgment;* but if the defendant be superseded *for not having been charged in execution*, he can never afterwards be arrested on the same judgment. But in no case can the defendant be again holden to bail for the *same* cause of action for which he has been superseded, whether superseded for want of proceedings *before* or *after* judgment, and not even in an action on the judgment; but *after* judgment obtained in such latter action, the defendant *may* be taken in execution; and a *supersedeas*, even after judgment, cannot be pleaded in bar of such an action.

After the *supersedeas* has been granted, but before the defendant is *actually* discharged, any other person may file a bill, and deliver a declaration against him as a prisoner still in custody; and perhaps the same plaintiff may deliver a declaration against him for a different, although not for the same cause of action.

ACTIONS BY AND AGAINST ADMINISTRATORS AND EXECUTORS.

If the time limited by statute have not expired before the death of the testator or intestate, the executor or administrator may bring the action at any time within a year

after the death; or, if the time limited have not expired within the year after the death, at any time before the expiration of such limited time. And if the executor bring an action, and die before judgment, his executor may bring a fresh action within a reasonable time afterwards.

An executor or administrator may swear to the debt, according to his belief, not being obliged to swear positively to the sum, as he would be if he were suing on his own account; nor is it necessary that he should negative a tender to his testator or intestate.

The declaration, and all the subsequent proceedings, are the same as in ordinary cases. If the verdict be for the executor as plaintiff, he is, of course, entitled to his costs; but if the executor lose the action, *he is not liable to costs,* unless the cause of action accrued after the testator's or intestate's death, and then the executor, &c. might have brought the action in his own right; nor is an executor liable to the costs of a nonsuit, nor to costs on judgment, as in case of nonsuit, unless he might have brought the action in his own right. But he is liable to the costs of a *non pros,* and to costs upon a discontinuance; or for not proceeding to trial according to notice; or if he have knowingly brought a wrong action, or been guilty of wilful default.

"For the further amendment of the law, and the better advancement of justice," the 3 & 4 Wm. IV. c. 42, after giving the judges power to make alterations in the mode of pleading in the superior courts, enacts, that where there was no remedy for injuries on the real estate of a person deceased, which were committed in his life-time; or for wrongs done by a person deceased, in *his* life-time, to the real or personal property of another; executors may in future bring actions for such injuries to the real estates of persons deceased, and actions may be brought against executors for such injuries to real or personal property by their testator.

3. All actions of debt for rent upon indenture of demise, or of covenant of debt on bond, &c. or of debt or *scire facias* upon recognizances, must be sued for within ten years after the session of 1833, or within twenty years of the cause of action; the said action by the party grieved within one year after that session, or within two years after cause of action; and all actions of debt on *award,* where the submission is *not* by speciality, or of fines on copyhold estates, or for escape, or money levied on *fieri facias,*

and all actions for penalties, damages, or sums of money, given to parties aggrieved, within three years after the session of 1833, or within six years from the cause of action; except in actions where any statute specially limits the period of bringing such actions.

4. But infants, femmes coverts, and lunatics, at the period of any right accruing, may prosecute such rights respectively within such times of their coming of age, being discovert, or of sound memory, as they might have done if of age, &c. at the time of the right accruing, and persons beyond seas may date the period of limiting the right to the period of their return; however, (s. 5.) parties may be sued upon *acknowledgment* in *writing*, or after any admission by *part payment*, within *twenty years* after such acknowledgment, &c. and (s. 6.) plaintiffs who commence proceedings in due time, and take nothing by their plaint, or defendants who being outlawed, reverse the outlawry, may commence new actions from time to time, within one year, and not afterwards.

7. *No part* of the United Kingdom is to be deemed *beyond the seas*, within the meaning of this act, nor of the statute of James, for limitation of actions, and avoiding suits at law.

8. No plea in abatement for the non-joinder is to be allowed in any court of common law, unless the plea state that the person resides within its jurisdiction, and such residence be stated on affidavit; and (s. 9.) to any such plea the plaintiff may reply that such person has been bankrupt, or insolvent debtor;—and (s. 10.) where, after such plea, the plaintiff, without trying such issue, commences another action against the defendants in the action in which such plea is pleaded, and the persons named in such plea as *joint-contractors* of debt, if it appear on trial, &c. that the original defendants were liable, but the persons named in the plea of abatement were not liable, the plaintiff will be entitled to judgment, &c. against those who are found liable; but the defendant, who is not liable, shall have judgment and costs against the plaintiff; the plaintiff being allowed the same as costs against the defendants, who have pleaded the non-joinder of such person; but defendants so pleading may on trial adduce evidence of the liability of the persons named in the plea.

11. A plea of misnomer shall be allowed in abatement of a personal action; but where it was before pleadable, the defendant may have the declaration amended at the

cost of the plaintiff, upon a judge's summons on affidavit of the right name. In actions (s. 12.) on bills of exchange, promissory notes, or written instruments, where the subscribing parties are described by *initial letters*, it is sufficient to insert such initials in affidavits to hold to bail, process, or declaration, instead of the name at length.

13. No wager of law is hereafter to be allowed.

14. Actions of debt on simple contract may be brought in any court of common law against executors and administrators; and (s. 15.) judges may make regulations as to the admission of written documents. Writs of inquiry under 8 & 9 Wm. III. c. 11, to be executed before the sheriff unless otherwise ordered; and the judges (s. 7.) may direct issues joined in certain actions for sums not exceeding £20,* to be tried before the sheriff or any other judge; the judgment (s. 18.) to be signed on the return of the trial, &c. unless application be made and granted for staying proceedings; and sheriffs to have the power of judges at *nisi prius;* provided (s. 19.) the provisions of 1 Wm. IV. c. 7, be extended to such writs, &c. The sheriffs (s. 20.) must name deputies resident in London. Defendants (s. 21.) may pay money into court with permission, except in actions for assault, battery, false imprisonment, libel, slander, malicious arrest, or prosecution, criminal conversation, or seduction; and (s. 22.) *local actions* may be tried in any county; and (s. 23.) amendments may be made on the record in matters not material to the merits of the case.

24. The court may direct facts to be found specially; a special case (s. 25.) may be stated without proceeding to trial. Witnesses (s. 26.) interested solely on account of the *verdict* are admissible; and (s. 27.) if objected to as incompetent, the names must be indorsed on the record, as evidence in any subsequent proceeding on the verdict, &c.

28. Juries may allow interest upon debts payable on *written* instruments, or from the time when payment of debts have been made in writing, with claim of interest at the same time; interest in all cases being payable where it is now payable by law. The jury may also (s. 29.) give *damages* in the *nature* of *interest;* and (s. 30.) interest is allowed on all writs of error for the time execution is delayed.

31. Executors suing in right of a testator must pay costs on nonsuits, &c. and (s. 32.) one or more of several

* See the directions at length, under the head "*Proceedings in the Sheriff's Court.*"

defendants having *nolle prosequi*, or a verdict, shall also have costs, and (s. 33.) also upon any particular count on which the plaintiff fails. Plaintiffs (s. 34.) in *scire facias*, and plaintiff or defendant on demurrer, are also to have costs as the case may be. In special juries (s. 35.) the costs are to follow a nonsuit as well as a verdict; and (s. 36.) the judges are to make regulations as to the officers of the courts at Westminster respecting the taxing of costs.

37. Executors of a lessor may distrain for arrears in his life-time; and (s. 38.) within six months after the determination of leases; but such distraining must be in conformity with the existing statutes.

39. A submission to arbitration by rule of court, &c. is not revocable, without the leave of the court; and the arbitrator may proceed, notwithstanding any attempt at revocation, or the absence of the party making the attempt.

40. Witnesses may be compelled to attend an order of reference, under pain of punishment for contempt of court; they are entitled to the same conduct-money and expenses as on trial in court. The application for the order must set forth the county in which the witness is then residing, or satisfy the court, &c. that such person cannot be found; and no witness is bound to produce any writing, &c. which he would not be compellable to produce at a trial, nor to attend on more than two consecutive days, to be named in such order.

41. On such rules of reference, the arbitrators must receive evidence upon oath or affirmation; and persons giving false evidence before them are punishable for perjury; and (s. 42.) the power of granting commissions to take affidavits is extended to Scotland and Ireland.

43. The only holidays to be observed under this Act, except Sundays, are the Nativity of our Lord, and the three following days, and the Monday and Tuesday in Easter week. This act commenced (s. 44.) June 1, 1833, and does not extend to Scotland or Ireland, except where so expressed.

Executors and administrators are not within the statutes by which Courts of Conscience have been established, and, therefore, they may be sued in the Court of King's Bench or Common Pleas, however trifling the cause of action may be. And if the defendant be an attorney, or officer of the Court, yet he is not entitled to his usual privileges, when sued as an executor.

Executors or administrators *cannot* be holden to bail,

except in cases where they have promised to pay the debts of their testator, or intestate, or under a judge's order, when they have been guilty of any waste.

If an executor, &c. allow judgment to go by default, or expressly confess the action, this is deemed a confession of assets, and he will be estopped from denying it afterwards, in an action on the judgment suggesting *devastavit*, or waste; so that he should take care to plead regularly to the action, unless he wish to acknowledge assets.

If he plead the general issue, or specially, the plea is delivered, or filed, as in ordinary cases. The plea of *plene administravit*, or *ne unques executor*, &c. when pleaded singly, must be delivered to the plaintiff's attorney, and not filed, nor do they require signing by counsel; but if the executor, &c. plead the general issue and *plene administravit*, or any other double plea, he must file them with the clerk of the papers.

If the executor plead *plene administravit*, or *plene administravit præter*, alone, the plaintiff, in his replication, may either deny it, or he may confess it, and pray judgment of *future* assets upon the *former* plea; or, upon the *latter*, take judgment at once of the assets acknowledged to be in the hands of the executor, and of *future assets* for the residue.

The ordinary judgment against an executor, &c. is, that the debt, damages, and costs, or the damages and costs shall be levied of the goods of the testator in his hands, if he have so much thereof in his hands to be administered; and, if not, then the costs to be levied on his own goods.

ACTIONS AGAINST AN HEIR, ON THE BOND OF HIS ANCESTOR.

THE heir is compellable to pay the bond and judgment debts of his ancestor, to the extent of the assets which have come to him by descent. And, even if he alien the property which has descended to him before action brought, he is still liable to the extent of the value of the property so descended. The heir, however, cannot be holden to bail; and if he be under age at the time of the action, instead of pleading, he may pray that the parol may demur until he be of full age.

If the heir plead, then, besides the defences which the ancestor might have set up to the action, he may plead that he is not heir; or that he has paid other bond and judgment creditors, to the full extent of the value of the lands descended, before the commencement of the action; or that he retains, in order to pay judgment debts; or to pay his own bond and judgment debt; or that he has nothing by descent, excepting a reversion expectant on the life of another, in which case the plaintiff may take judgment of assets when they arise.

The heir, however, cannot plead that there is an executor who has assets, for the obligee may sue either the heir or the executor, at his election. The plea of *riens per discent,* (that is, nothing by descent,) and most other pleas by an heir, must be delivered to the plaintiff's attorney, and not filed with the clerk of the papers, nor need they be signed by counsel.

If the heir do not plead *riens per discent,* or some plea denying the plaintiff's cause of action, he must confess the action, and show the certainty of the assets; for if issue be taken on the quantity of assets, and it be found that the heir has other lands by descent; or if the heir plead a fact which he *knows* to be *false,* and it be found against him, as when he pleads nothing by descent, and it is found that he has received *something,* however *small,* or *insufficient* to discharge the debt, the plaintiff will be entitled to a general judgment, and execution for the debt, damages, and costs against the heir, in the same manner as if it were for his own debt. The plea of *non est factum,* however, is an exception to the above rule; for, if it be found *false,* still the judgment will only be against the lands descended.

If the heir have aliened the lands previously to the suing out of the writ, he is expressly rendered liable for the speciality debts of his ancestor, to the amount of the lands aliened, by stat. 3 & 4 Wm. and Mary, c. 5, s. 5.

An action is also maintainable against *a devisee,* and is proceeded in in the same manner, and under the same circumstances, as an action against an heir.

FREEHOLD AND COPYHOLD ESTATES

Made Assets for the Payment of simple Contract Debts.

In order to render freehold and copyhold estates available to creditors for the payment of simple contract debts, the statute 3 & 4 Wm. IV. c. 104, enacts, that "when any person shall die seised of or entitled to any estate or interest in lands, tenements, or hereditaments, corporeal or incorporeal, or other real estate, whether freehold, customary, or copyhold, which he shall not by his last will have charged with, or devised subject to the payment of his debts, the same shall be assets to be administered in courts of equity for the payment of the just debts of such persons, as well debts due on simple contract, as on speciality; and that the heir or heirs at law, customary heir or heirs, devisee or devisees of such debtor shall be liable to all the same suits in equity at the suit of any of the creditors of such debtor, whether creditors by simple contract or by speciality, as the heir or heirs at law, devisee or devisees of any person or persons who died seised of freehold estates, was or were before the passing of this Act liable to in respect of such freehold estates, at the suit of creditors by specialty in which the heirs were bound, provided always, that in the administration of assets by courts of equity under and by virtue of this Act, all creditors by *specialty* in which the heirs *are* bound, shall be paid to the full amount of the debts due to them, before any of the creditors by simple contract, or by specialty, in which the heirs are *not* bound, shall be paid any part of their demands."

AMENDMENT OF THE LAW RESPECTING DOWER.

For the amendment of the law relating to *dower*, the 3 & 4 Wm. IV. c. 105, enacts, that when the husband dies beneficially entitled to any land for an interest which shall not entitle his widow to dower, and such interest, whether equitable, or partly legal and partly equitable, shall be an estate of inheritance in possession, or equivalent thereto, (except an estate in joint-tenancy,) the widow shall be

entitled to dower; and (s. 3.) when a husband has been entitled to entry, &c. and his widow would have been entitled, if he had obtained possession, she is entitled to dower, although he never did, if the dower be sued for or obtained within the period when the right of entry might have been enforced.

4. No widow, however, shall be entitled to dower out of any land which shall have been *absolutely* disposed of by her husband in *his life-time*, or by *his will*; and (s. 5.) all partial estates, charges, and specialty debts to which the land is liable, shall be valid and effectual against the right of dower; and (s. 6.) a widow is not entitled out of any land of her husband, when it is declared the widow shall not be so entitled, in any deed by which the land was conveyed to him, or executed by him; nor (s. 7.) shall the widow be entitled to dower when in any will of her husband he declares his intention that she shall not be entitled to dower out of this land, or any portion of it; and also (s. 8.) the right of a widow to dower shall be subject to any conditions, restrictions, or directions, which shall be declared by the will of her husband.

9. And on a devise of any real estate to the widow, such widow shall not be entitled to any other dower, unless a contrary intention is declared by will; but (s. 10.) no bequest of *personal* estate to a widow shall bar her right of dower, unless a contrary intention is declared by will; yet (s. 11.) an agreement on the part of the husband not to bar dower may be enforced; and (s. 12.) legacies bequeathed to widows in satisfaction of dower are entitled to *priority* over all other legacies.

13. No widow is hereafter entitled to the dowers *ad ostium ecclesiæ*, or *ex assensu patris*; and (s. 14.) this act does not extend to the dower of any widow who shall have been married on or before January 1, 1834; and shall not give any will, deed, contract, engagement, or charge, executed, entered into, or created before the said day, the effect of defeating or prejudicing any right to dower.

AMENDMENT OF THE LAW OF INHERITANCE.

For the amendment of the law of inheritance, 3 & 4 Wm. IV. c. 106, enacts (s. 2.) that descent shall always be traced from the purchaser; but the *last owner* shall be considered the purchaser, unless the contrary be proved.

3. The heir entitled under a will shall take as devisee,

and a limitation to the *grantor*, or his heirs, shall create an estate by purchase.

4. Where heirs take by purchase, under limitations to the heirs of their ancestor, the land shall descend as if the ancestor had been the purchaser, under any assurance, or will, dated *after* December 1, 1833.

5. No brother or sister shall be considered to inherit immediately for his, or her brother or sister; but every descent from a brother or sister shall be traced through the parent.

6. Every lineal ancestor is capable of being heir to any of his issue; and where there shall be no issue of the purchaser, his nearest lineal ancestor shall be his heir. in preference to any person who would have been entitled to inherit, either by tracing his descent through such lineal ancestor, or in consequence of there being no descendant of such lineal ancestor; so that the father shall be preferred to a brother or sister, and a more remote lineal ancestor to any of his issue, other than a nearer lineal ancestor or his issue.

7. No *maternal* ancestors of the person from whom the descent is to be traced, nor their descendants, shall be capable of inheriting until all his *paternal ancestors* and their descendants have failed; and no female paternal ancestor of such person, nor any of her descendants, shall be capable of inheriting until all his male paternal ancestors and their descendants have failed; and no female maternal ancestor of such person, nor any of her descendants shall be capable of inheriting, until all his male maternal ancestors and their descendants shall have failed; and in general failure of heirs male, (s. 8.) the mother of the *more remote* male ancestor shall be *preferred* to the mother of the *less remote* male ancestor.

9. The half-blood, if on the part of the male ancestor, to inherit after the whole blood of the same degree; and if on the part of a female ancestor, after the same manner.

10. The descendants of a person attainted, and who shall have died before the descent had taken place, may inherit notwithstanding such attaint, unless the land has escheated to the crown, in consequence of the attainder, before January 1, 1834.

11. The Act does not extend to any descent which takes place on the death of any person dying before January 1, 1834; and (s. 12.) limitations made before that day to the heirs of a person then living, shall take effect as if the Act had not been made.

ACTIONS BY INFANTS.

THE process in these actions is the same as in ordinary cases, and may be sued out in the name of the infant, before any *prochein amy*, or next friend, or guardian, is appointed. An infant cannot prosecute an action either in *person* or by *attorney;* but he may sue either by *prochein amy*, or guardian; but where several executors are plaintiffs, and one of them is an infant, all the plaintiffs may sue by attorney, and those who are of age may appoint the attorney for themselves and the infant.

If an infant sue by *guardian*, the guardian must have a warrant; if by *prochein amy*, a warrant is unnecessary, but both must be admitted by the Court; to effect which, let the person intended as *prochein amy*, or guardian, being some friend of the infant who is willing to prosecute the action for him, attend with the infant before a judge at chambers, who will accordingly make an order to the clerk of the rules to draw up the rule. Pay the judge's clerk 12*s*. Draw up the rule with the clerk of the rules, pay 7*s*. 6*d*.; and annex a copy of it to *your declaration*, before you deliver it. The admission may, if necessary, be *general*, to prosecute *all* actions, &c. for the infant. If the *prochein amy*, or guardian, and infant cannot attend, write out a petition to be signed by the infant, praying to be admitted to prosecute, &c. by A. B. &c. and at the foot of it write a *consent*, to be signed by the *prochein amy*, &c. then make an affidavit of the signing of the petition and consent, and let these documents be presented to the judge at chambers, who will thereupon grant his fiat or order, and you proceed to draw up the rule as before mentioned.

The infant cannot afterwards remove his guardian, nor can he disavow the action of his *prochein amy;* but he may have a writ out of Chancery to remove him, or he may make an application to the Court of King's Bench for that purpose, which is more usual.

If the defendant be entitled to costs, he may proceed for them by attachment against the *prochein amy*, or guardian; or he may sue out an execution against the infant himself, whether he have sued by *prochein amy*, or not. And if the defendant wish to know the place of residence of the *prochein amy*, or guardian, he may oblige the plaintiff to give him notice of it, by an application to

the Court, or to a judge at chambers, for that purpose; and if the *prochein amy*, or guardian, be not a responsible person, the Court will order the appointment of some other in his stead.

ACTIONS BY AND AGAINST ATTORNEYS AND OFFICERS.

Attorneys and officers of the Court must be sued by bill, and cannot be held to bail; but the *clerks* of the officers of the Court are not entitled to this privilege. In some instances, attorneys, as defendants, are subject to the jurisdiction of Courts of Conscience, as in Westminster, London, and the Tower Hamlets, when they reside within such jurisdictions; and, therefore, for debts within the cognizance of these Courts, attorneys must be sued there, and not in the Courts of which they are members; but, in all other cases, the attorney must be sued in the Court of which he is an officer, and not elsewhere, however trifling the cause of action may be.

But where the proceedings against an attorney or officer are at the suit of the king, or if he be sued as an executor or administrator, or if sued *jointly* with his wife, or any other person not privileged, or if he have left off practice, or not taken out his certificate, he loses his privilege, and may be proceeded against as in ordinary cases.

ACTIONS AGAINST JUSTICES OF THE PEACE, CONSTABLES, &c.

Actions against justices of the peace, for any thing done by them in the execution of their office, or against constables, headboroughs, or other persons acting by their orders, or in their aid, must be *commenced* within *six calendar months* after the cause of action has arisen. And actions brought against officers of the *excise* or *customs* for any thing done by them in the execution of their duty, must be commenced within *three months* after the cause of action has arisen.

Before an action can be commenced against a justice of the peace, &c. the attorney, or agent of the plaintiff, must, *one calendar month at least* previous to his suing out any writ against such justice, or causing him to be served with process, deliver to him a notice, in writing, of such intended

writ, &c. or leave such notice at his usual place of abode; in which notice the cause of action shall be clearly and explicitly stated, and the name of such attorney or agent, and his place of abode, shall be indorsed thereon.

The same forms must be also observed before an action can be commenced against an officer of the excise or customs, or any person acting by his orders, or in his aid, in the execution of his duty.

And where an action is intended to be brought against a constable or other officer, or any person acting by his order, or in his aid, for any thing done by him in obedience to a warrant under the hand and seal of a justice of the peace, a *demand in writing* of the *perusal* and *copy* of such warrant, signed by the party demanding the same, or by his attorney, must be made, or left at the usual place of abode of such constable or officer, by the plaintiff, or his attorney or agent; and if the perusal and copy of the warrant be not granted within six days after being thus demanded, or before the action has been commenced, the plaintiff may bring his action against the constable or other officer alone; but if such perusal and copy be granted, then, if the plaintiff sue the constable, &c. without making the justice also a party, upon proof of the warrant at the trial, the jury shall give a verdict for the defendant, notwithstanding any defect of jurisdiction in the justice who made the warrant. Or, if the action be brought jointly against the justice and such constable, &c. then, upon proof of the warrant, the jury shall find a verdict for such constable; but if they find a verdict also against the justice, he shall pay to the plaintiff both his costs in the action, and also such costs as the plaintiff may have been obliged to pay to the constable defendant, in actions of *trespass* and *case*; but not in actions of *assumpsit*, *replevin*, or *the like*. The *venue* in such cases must be laid in the county in which the facts complained of were committed; but where committed *out of the kingdom*, by any *civil* or *military* authority, the venue may either be laid at *Westminster*, or in *any county* where the defendant shall then reside.

Justices of the peace, and officers of the customs and excise, may *tender amends* before action brought, and plead such tender with the general issue, or other plea, with the leave of the Court; and if they have neglected to tender amends, or the tender be insufficient, they may pay money into Court, and such proceedings are thereupon to be had, as in ordinary cases where this is allowed.

The plaintiff is bound to prove at the trial, the service

of the notices required by the statutes, or the defendant will be entitled to a verdict; and he is restricted in his proof by this notice, in the same manner as by a bill of particulars.

If the plaintiff obtain a verdict in actions against officers of the customs or excise, he will *not* be entitled to costs, if the judge certify there was *probable cause* for the seizure; nor in actions against justices of the peace, unless it be stated in the declaration that the acts complained of were done maliciously, and without reasonable and probable cause. But in actions against justices, constables, &c. if the judge certify that the injury was wilful, and maliciously committed, the plaintiff is entitled to *double costs.*

And if the defendant obtain a verdict, or if the plaintiff be nonsuited, or discontinue the action, the defendant is entitled to *double costs*, in actions against justices, constables, &c.; to *treble costs*, in actions against officers of customs or excise; and to *double costs*, in actions against other persons holding public employment, civil or military, in or out of the kingdom, and having power to com mit to safe custody. But, in order to entitle an officer to double or treble costs, if it do not appear upon the face of the record that the action was brought against him as such officer, for something done by him in the execution of his duty, he must obtain a certificate to that effect from the judge, either at or after the trial.

In actions against *clergymen*, the only peculiarity is in the execution, when the defendant has no lay fee; in which case the plaintiff may sue out a *fieri facias* against his ecclesiastical property, directed to the bishop of the diocese, commanding him to make of the ecclesiastical goods and chattels belonging to the defendant within his diocese, the sum therein mentioned.

ACTIONS BY PAUPERS.

EVERY poor person who may have cause of action, shall have writs according to the nature of his case, without paying for the sealing or writing of the same; and the justices shall assign him counsel and attorneys, who, together with the officers of the Court, shall act *gratis*. The party applying must swear that he is not worth £5, except his wearing apparel, and the matter in question in the cause.

It is discretionary with the Court or chief justice to grant the indulgence of suing thus in *forma pauperis;* and they will not grant it, for instance, in an action for slander.

It may be granted, either at the commencement of the suit, or at any subsequent period of it, but it can have no retrospective effect: and the privilege is confined to the plaintiff, and cannot be granted to a defendant.

The party may be admitted to sue in *forma pauperis* by a motion in Court, or by a petition to the chief justice, which is the mode generally adopted. An affidavit to the effect that the plaintiff is not worth £5, must be made and sworn by the pauper, before a judge or commissioner. Then a petition must be prepared, signed by the pauper, stating the cause of the action, and praying to be admitted to sue in *forma pauperis*, and that counsel and an attorney (*naming them*) may be assigned to him. At the foot of this petition, get some counsel to subscribe his opinion shortly, that the plaintiff has good cause of action. Annex the affidavit to the petition; take them to the chief justice's chambers, and his clerk will thereupon make out the order. Pay him 2*s.* 6*d.* If moved for in Court, annex the affidavit and opinion to the brief, and afterwards draw up the rule with the clerk of the rules. Take this rule, or order, to the different offices through which you pass the proceedings, in order to avoid any demand for fees, and annex a copy of it to the declaration, before you deliver or file it.

After admission to sue in *forma pauperis*, the plaintiff is at liberty to carry on all proceedings without stamps, or payment of any fees to the officers of the Court, or to his counsel or attorney. But if he obtain judgment in the action, the counsel, attorney, and officers are entitled to such fees as may be allowed by the master. A pauper is entitled to costs, in all cases in which a defendant must pay them; but in *no case* is he obliged to pay costs; though he may suffer such other punishment as the Court shall deem reasonable, in cases where the pauper may be guilty of very gross omissions or misbehaviour, by which the defendant may suffer any great injury, or serious inconvenience. This punishment, in general, is to *dispauper* him, or to stay proceedings in a second action, until the costs of the first are paid; but this the Court has sometimes refused to do.

Persons indicted for libels in the Court of King's Bench, may also be permitted to sue in *forma pauperis*, by application to the Court on affidavit, stating that copies of the proceedings, witnesses, &c. are essential to the defence, and that the parties applying are entirely destitute of the means of providing them for themselves. Copies, &c. and subpœnas will then be allowed; and attorney and counsel

are sometimes assigned; but this is said to be discretionary with the Court to appoint, and with attorney or counsel to accept the appointment, so that parties meaning so to apply should have the consent of counsel and attorney to act in the first instance.

ALTERATION OF THE PRACTICE OF THE SUPERIOR COURTS AT WESTMINSTER,

By an Act passed in the first year of the reign of King William the Fourth, entitled "An Act for the more effectual administration of justice in England and Wales."

THIS ACT having materially altered the constitution and practice of the superior courts at Westminster, an ample abstract of the statute, with practical directions, is not only necessary for the information of the general reader, but may be particulary acceptable to members of the profession in the country, who are engaged in the management of common-law proceedings.

The Act provides for the appointment of an additional puisne judge to each of the superior courts of law, for the greater facility and dispatch of business, and puts an end to the separate jurisdiction for the county palatine of Chester, and principality of Wales:—and it enacts that the puisne judges of the Courts of King's Bench, Common Pleas, and Exchequer, shall sit by rotation in each term, or otherwise, as they shall agree amongst themselves, so that no greater number than three shall sit at each time in *banc*, for the transaction of business in term, unless in the absence of the lord chief justice or lord chief baron; and one of the judges of either of the courts, while the judges of the said courts are sitting in banc, may sit apart from them, for the business of adding and justifying special bail, discharging insolvent debtors, administering oaths, receiving declarations required by statute, hearing and deciding upon matters on motion, and making rules and orders in causes and business depending in the court to which such judge shall belong, in the same manner, and with the same force and validity, as may be done by the court sitting in banc.

Every judge of the said courts, to whatever court he may belong, is authorised to sit in London and Middlesex, for the trial of issues arising in any of the said courts, and to transact such business at chambers, or elsewhere depending

in any of the said courts, as relates to matters over which the said courts have a common jurisdiction, and as may be, according to the practice of the court, transacted by a single judge.

TERMS AND RETURNS.

The Hilary, Easter, Trinity, and Michaelmas terms, by section 6, in and after the year 1831, are fixed as follows :—

Hilary Term contains	21 days, begins	11th January, ends	31st Jan
Easter Term	24	15th April	8th May
Trinity Term	22..........	22d May	12th June
Michaelmas Term..	24..........	2d November ..	25th Nov

The *first essoign day*, or general return day for every term, to be the fourth day before the commencement of the term, *both days included in the computation*, which by this computation will, in all cases, leave two clear days between the essoign day and the first day of full term, except when the first essoign day happens on a Sunday.

The *second* essoign day to be the *fifth* day of the term.

The *third* essoign day to be the fifteenth day of the term.

And the *fourth* and *last* essoign day to be the nineteenth day of the term.

The first day of the term is to be included in the computation with the previous relation to the commencement of the term, and to be distinguished by the day of the term on which they respectively fall:—Monday is to be, in all cases, substituted for Sunday, when the day would fall on a Sunday; and in Easter term there are to be four returns only, instead of five. If the Thursday before, or the Wednesday after Easter-day, or any of the intervening days, fall in Easter term, there are to be no sittings in *banc* on any of such intervening days, but the term shall in such cases be prolonged for so many days of business as shall be equal to the number of intervening days before mentioned, exclusive of Easter day; and the commencement of Trinity term shall in such case be postponed for an equal number of days of business.

Easter day, in 1831, fell on the 3d of April, and did not therefore interfere with the Easter and Trinity terms; but, for example of the new practice, we give the essoigns or general return days of the term, and the appearance days for the year 1831, which were as follows :—

[illegible]

[illegible]	[illegible]
1. Saturday, the 8th January.	Tuesday, the 11th January.
2. Saturday, the 15th January.	Tuesday, the 18th January.
3. Tuesday, the 25th January	Friday, the 28th January,
4. Saturday, the 29th January	Monday, the 31st January.

EASTER TERM.

1. Tuesday, the 12th April.	Friday, the 15th April.
2. Tuesday, the 19th April.	Friday, the 22d April.
3 Friday, the 29th April	Monday, the 2d May.
4. Tuesday, the 3d May	Monday, the 9th May.

TRINITY TERM.

1. Friday, the 20th May	Monday, the 23d May.
2 Friday, the 27th May.	Monday, the 30th May.
3. Monday, the 6th June.	Thursday, the 9th June
4. Friday, the 10th June.	Monday, the 13th June.

MICHAELMAS TERM.

1. Monday, the 31st October	Wednesday, the 2d November.
2. Monday, the 7th November	Thursday, the 10th November.
3. Wednesday, the 16th November.	Saturday, the 19th November.
4. Monday, the 21st November	Friday, the 25th November.

7. *Sittings after Term.*—The time for sitting at *Nisi Prius*, in London and Middlesex, is limited to not more than *twenty-four days* after Hilary, Trinity and Michaelmas terms, *excluding Sundays;* and not more than *six days, excluding Sundays*, after Easter term, to be reckoned consecutively immediately after such terms. The judges may appoint a day, or days, for *trials at bar;* and the time so appointed, if in vacation, shall for the purpose of such trial, be deemed part of the preceding term; and a day or days may be specially appointed, not being within such twenty-four days, with the consent of the parties, their counsel, or attorneys, for the trial of any cause at *Nisi Prius*.

WRITS OF ERROR.

8. *Writs of Error* are made returnable only before the judges, or judges and barons, as the case may be, of the other two courts, in the Exchequer Chamber. A *transcript* of the record only is to be annexed to the return of the writ; and the court of error, after errors assigned, and issue in error duly joined, shall, at such time as the judges shall appoint, either in term or vacation, review the proceedings and give judgment thereon; and such

proceedings and judgment, as altered or affirmed, shall be entered on the original record; and further proceedings thereon shall be awarded by the court in which the original record remains, from which judgment in error no writ of error shall lie, except to parliament.

This clause *does not alter* either the law or the practice respecting writs of error, as respects the judgments of the Court of *King's Bench*;—but in judgments of the *Common Pleas*, the writ of error, instead of being returnable before the judges of the King's Bench only, in their court, will in future be returnable before the judges of the King's Bench, and the barons of the Exchequer Chamber; and the writ of error from the *law side* of the Exchequer, instead of being returnable, as now, before the judges of the Common Pleas, and the Barons of the Exchequer, will be returnable before the judges of the King's Bench, and of the Common Pleas in the Exchequer Chamber.

The *writ of error* will be sued out as heretofore, by the cursitor of the county in which the *venue* in the original action was laid, whose duty it is to direct the writ properly.

Bail in error, prior to the Act of 6 Geo. IV. c. 96, was only required in particular cases; but now, by that Act, no execution upon any judgment in any personal action shall be stayed, or delayed by writ of error, or supersedeas thereon, without the special order of the court, or some judge thereof, unless a *recognizance* with condition, according to 3 Jas. I. entitled "*An Act to avoid unnecessary delays of execution*," be first acknowledged.

9. Judgment may be pronounced during the assizes or sittings, on all trials for *felonies*, *misdemeanors* upon any record of the Court of King's Bench, both upon persons suffering judgment by default or confession, and those who may be tried and convicted, whether such persons be present in court or not; *except* when such prosecution shall be by information filed by the leave of the Court of King's Bench, or by the attorney-general, wherein he shall pray that the judgment may be postponed; and all judgments pronounced shall be indorsed upon the record of *Nisi Prius*, and afterwards entered upon the record in court; and shall be of the same force and effect as a judgment of the court; *unless* the court shall, within *six* days after the commencement of the ensuing term, grant a rule to show cause why a new trial should not be had, or the judgment amended. The judge before whom the trial was had, may either issue an immediate warrant for commit-

ting the defendant in execution, or respite the execution of judgment, upon such terms as he shall think fit, until the *sixth* day of the ensuing term; and if imprisonment shall be part of the sentence, to order the same to commence on the day the party shall be taken to prison.

10. A provision is made that attorneys of the King's Bench and Common Pleas may now practise in the *law side* of the Court of Exchequer, upon being first admitted, (on application to one of the barons,) without employing a clerk in court in the capacity of an attorney, which was the practice heretofore. And the barons are to distinguish the fees which shall continue to be taken by the clerks in court, for the duties performed as officers of the court, similar to the duties of the officers of the other superior courts, from such fees and charges as shall be allowed to be taken by the attorneys so admitted to practise, so that the amount of fees upon the whole do not exceed the charges as now allowed upon taxation.

NEW REGULATIONS.

11. It has been the custom of the judges of the respective courts, to make rules and orders in matters of practice, which were applicable only to their own courts; but by this Act, in all matters of practice in any of the courts over which they have a common jurisdiction, or relating to the practice of the Court of Error, the judges of the courts, *jointly*, or *eight* or more of them, including the chiefs of each court, may make general rules and orders for regulating the proceedings of all the said courts, which are to be observed in all the courts; and no general rule or order respecting such matters, is to be made in any other manner. This will have the effect, in future proceedings, of assimilating the practice of all the courts touching the questions on which general rules hereafter to be pronounced, may operate.*

12. Bail may be justified before a judge in chambers, or other place to be appointed by him, *as well in term as in vacation*, and whether the defendant be actually in custody or not.

* It is to be hoped that the *existing* general rules and orders of the respective courts will be revised upon the same principle; for, until the practice of all the courts is fully assimilated, the objects of the new regulations to equalise the business of the courts, and relieve the King's Bench from its ordinary pressure, will not be realised; particularly as the practice of the Court of Exchequer, from having been limited to the clerks in court, who are so few in number, is generally unknown to the profession at large.

13. The king's writ, in future, is to be directed and obeyed, and the jurisdiction of the Courts of King's Bench, Common Pleas, and Exchequer, and of the judges and barons thereof, be extended and exercised over and within the county of Chester, the county of the city of Chester, and the several counties in Wales, *in the same manner as the jurisdiction of such courts is now exercised over the counties of England*, not being counties palatine, any statute to the contrary notwithstanding; and all original writs to be issued into Chester and Wales, shall be issued by the cursitors for London and Middlesex.

The jurisdiction of the courts of great session of the county palatine of Chester, and of the great sessions for the several counties in the principality of Wales, having been abolished, and the full benefit of the English system of judicature introduced, it follows that all proceedings in those counties must now be carried on in the superior courts at Westminster; and all suits which, at the commencement of the Act, might be depending in any of the said courts of Chester and Wales, if in equity, are transferred to the Court of Chancery or Exchequer, at the option of the plaintiff, if he make his choice before the last day of the following Michaelmas term, (and in default of his so doing, then at the option of the defendant;) and suits in law are transferred to the Court of Exchequer.

The Act does not give any directions respecting the mode of transferring the suits depending at the time the Act comes into operation; and, as the judges may make no general rules before that period, it may be expedient to suggest what appear to be the proper steps for the parties to take, for the transfer of common lawsuits to the Court of Exchequer.

If the defendant has been served with process to which he has not appeared, the copy of process may be transmitted to the agent in London, who will enter the defendant's appearance in the Court of Exchequer, in the same way as if the defendant had been served with an Exchequer writ; and if, in the like stage of the cause, the defendant omits to appear, an affidavit of the service of the writ should be transmitted by the plaintiff's attorney to his agent in London, who will enter the appearance according to the statute, and then proceed by filing the declaration in the usual way.

If the defendant has appeared in the court below, and the plaintiff has delivered his declaration, but to which the defendant has not pleaded, the draft of the declaration

should be transmitted by the attorney of the plaintiff, and the declaration, as delivered to the defendant, should be transmitted, by his attorney, to the respective agents in London, when a plea must be demanded, and the cause will then proceed as in other cases.

If interlocutory judgment be signed in the court below, all the proceedings must be transmitted to the plaintiff's agent, who will prepare the writ of inquiry to assess the damages; but, although the judgment is entered in the court below, an entry of the proceedings may be necessary to be made on the rolls of the Court of Exchequer, upon which the final judgment on the return of the inquisition must be entered, to warrant the execution.

If the cause be at issue in the court below, the proceedings must be transmitted by each party to his respective agent, and the issue should then be issued to the defendant's agent, with notice of trial for the next assizes. In this case also, the issue should be entered on the rolls of the Exchequer.

If the plaintiff has obtained a final judgment against a defendant, which is not satisfied, the execution must of course issue out of the Court of Exchequer.

If an attorney, appearing for a defendant in the court below, omit to instruct his agent in London, the plaintiff, in order that he may not be impeded in the suit, may deliver to the defendant himself, or to his attorney below, all notices, rules, and orders in the cause, until he has notice of an agent; from which time, according to the present practice, all rules, orders, and notices must be delivered to the agent.

The same regulations will apply to bailable process. If the defendant have not put in bail on the Act coming into operation, he must put in and perfect his bail in the Court of Exchequer; and to *compel a justification*, the rules to return the writ and bring into court the body of the defendant, must issue from that court.

Actions and suits commenced after this Act is in operation, may be brought in whichever court a plaintiff thinks proper.

Arrest in Wales.—By the Act of 7 and 8 Geo. IV. c. 71, s. 7, no sheriff or other officer in Wales, or the counties palatine of Chester, Durham, or Lancaster, shall upon mesne process issuing out of the courts of Westminster, arrest, or hold any person to special bail, unless the process shall be indorsed for bail in a sum of not less than £50. Upon this, the question may arise, whether, as the Act of

1 Wm. IV. s. 13, directs all writs to be obeyed in Chester and Wales in like manner, to the same extent, to all intents and purposes, as they are in other counties in England, a defendant can now, notwithstanding the Act 7 and 8 Geo. IV. be arrested in Chester or Wales, for a debt under £50. If the Act is construed that no such arrest can be made, the inhabitants of those counties enjoy a privilege, by the abolition of the Welsh judicature, which no other of the king's subjects have. The intent of process is to bring a defendant into court, and therefore to that extent, and for that purpose, the process is to be obeyed in Chester and Wales, as in other counties.

15. This Act does not abolish or affect the obligations and duties, or the jurisdiction or rights now exercised by the mayor and citizens of Chester, in the courts of the county of the city of Chester, or otherwise. *Except*, that such writs of error, or false judgment, as by charter or usage of the corporation are brought before the courts abolished by this Act, shall hereafter be returnable in the King's Bench.

16. Attorneys of the courts of Chester and Wales, not being attorneys of the superior courts at Westminster, will now be allowed to practise in those courts, in all actions and suits against persons residing, at the commencement of the suit, without the county of Chester, or principality of Wales; but, in order so to qualify them, they must cause their names to be entered upon a roll to be kept for that purpose, by the proper officer of each of the superior courts in which they intend to practise, and for which a fee of one shilling is to be paid; to authorise the officer to make such entry, the admission in the court below must be produced. By the same section, clerks having served, or now actually serving their clerkships, to attorneys of the Court of Great Sessions, and who would be entitled to be admitted attorneys of those courts, may, before the expiration of six months from the passing of the Act, be admitted attorneys of the courts at Westminster, for the purpose of practising there in actions and suits against persons residing, at the commencement of the suit, in Chester and Wales, without paying a greater duty than would now be payable upon their admission to the Court of Great Sessions. But this provision does not extend to clerks now serving under articles to attorneys of the Courts of Great Sessions upon the lesser duty, and whose articles do not expire so as to entitle them to admission in the courts of Westminster within six months;

the consequence of which is, that such persons, before they can be admitted in the courts at Westminster, must pay, in addition to the sum already paid on their articles, a sum sufficient to make the full duty, as if they had served under articles to attorneys of the courts at Westminster. By sect. 17, attorneys and solicitors admitted and practising in the Courts of Great Sessions, may be admitted attorneys of the courts at Westminster, upon payment of such sum for duty, in addition to the sum already paid, as shall, together with the latter sum, amount to the full duty required upon the admission of attorneys at Westminster.

By sect. 18, commissioners appointed for taking affidavits, or a master extraordinary in chancery of any of the Courts of Great Sessions, may exercise, within the limits of his existing commission, the same power and authority, and for the same purposes, as if his commission had issued from the courts at Westminster; but prior to his so acting, he must produce his appointment before the proper officer of the respective courts in which he means to act, and have his name inserted in a list to be kept for the purpose of entering such commissioners or masters extraordinary; and for such entry, a fee of one shilling is to be paid.

In proceeding by original writ, in the county of Chester or in Wales, the writ is to be issued by the cursitor for London and Middlesex; and the proceedings thereon are to be transacted by officers of the court of King's Bench and Common Pleas, to be named by the chief justices of each court.

ASSIZES FOR CHESTER AND WALES.

19. These are to be held for the despatch of criminal and civil matters within the county of Chester and the several counties of Wales, under commissions similar in manner and form to those used for the counties in England; and all laws now in force relating to such commissions, are to extend to Chester and Wales.

20. Until otherwise provided by law, one of the two judges appointed to hold the assizes for Chester and Wales, is to hold such assizes at the several places where the same have been most usually held in South Wales. The other judge is to hold such assizes at the several places where the same have been most usually held in North Wales: and both the judges are to hold the assizes for Chester.

RENDERING BAIL.

21, 22. According to the present practice of the courts, after the return of the writ, a defendant could not be rendered to the custody of *the sheriff* in discharge of his bail; such render being required to be made to the marshal of the King's Bench, or the warden of the Common Pleas. But a defendant may now be rendered in discharge of his bail, *either* to the prison of the court out of which such process issued, or to the common gaol of the county in which he was arrested. Before, also, a defendant who was in custody in any county gaol, could not be rendered in discharge of his bail, in any other action depending against him, otherwise than by bringing him up by *habeas corpus*, and rendering him to the custody of the marshal or warden; but at present, a defendant in custody in any county gaol in England or Wales, by virtue of any proceedings in any of the superior courts of record, may be rendered in discharge of his bail, in any other action depending in any of the said courts.

How to render.—In proceeding to render a defendant to the custody of the prison of the sheriff in whose county he was arrested, a judge's order may be obtained for that purpose, either on the application of the defendant, or of his bail, or *either* of the bail, which order may be obtained *ex parte;* the defendant must then be rendered to the keeper of the prison, and the judge's order lodged with the gaoler. A notice of such render, and of lodging the order with the gaoler, and of the defendant being in the actual custody of the gaoler, signed by the defendant or the bail, or *either* of the bail, or by the attorney or agent of either of them, must then be delivered to the plaintiff's attorney or agent; and a copy of the judge's order should at the same time be served; and the sheriff or other person responsible for such debtors, are, on such render being so perfected, duly charged with the custody of such debtors, and the bail exonerated from any further liability.

Form of Notice of Render in such Cases.

In the King's Bench.

Between { A. B. plaintiff, and C. D. defendant. }

Take notice that the above-named defendant, pursuant to an order of the hon. Mr. Justice Bailey, dated the first day of January, 1831, was this day rendered, in discharge

of his bail in this action, to the custody of the sheriff of the county of Berks, and that the said order is duly lodged with the gaoler of the said county, and that the said defendant is now actually in custody of such gaoler, by virtue of such order. Dated this 10th day of January, 1831.

Yours, &c. G. H. defendant's attorney.

To Mr. E. F.
Plaintiff's attorney or agent.

To render a defendant in the actual custody of the gaoler of any county in England or Wales, by virtue of any proceedings out of his Majesty's superior courts of record, *in any other action* depending in the said courts, a judge's order in the action in which the intended render is to be made, must be obtained by application of the same parties as before; which order must be lodged with the gaoler on the defendant's render, and similar notice be given to the plaintiff's attorney or agent of such render and lodgment of the order, and of the defendant's being then in actual custody, as before mentioned.

In order to complete the exoneration of the bail, and to procure the exoneretur to be entered on the bail-piece, an affidavit of the render, and of the service of the notice, must be made in the following form.

In the King's Bench.

Between { A. B. plaintiff, and C. D. defendant.

G. H. of in the county of , gentleman, maketh oath and saith, that the abovenamed defendant, on the first day of January instant, was rendered to the custody of the sheriff of the county of in discharge of his bail in this action, pursuant to an order of the honourable Mr. Justice Bailey, dated the day of 1831, obtained for that purpose; and at the time of such render, the said order was lodged with the keeper of the said sheriff's prison at aforesaid, and that the said defendant is now in the actual custody of the keeper of the said prison, by virtue of such order. And this deponent further saith, that he did, on the said day of , serve Mr. E. F. the plaintiff's attorney or agent in this cause, with a true copy of the notice hereunto annexed, by delivering the same to a clerk of the said Mr. E. F. at his office in Lincoln's inn.

(Signed) C. H.

Sworn, &c.

'Then take this affidavit to the master's office in the King's Bench, or the filacer of the proper county in the Common Pleas, or the master of the Exchequer, as the case may be, who will enter the exoneretur on the bail-piece, and file the affidavit.

CUSTODY OF RECORDS.

" 27. The records of the courts which may be abolished by this Act, are to be kept in the same places as at present, and by the same persons, until otherwise provided for; and the Court of Common Pleas has the same authority to amend the record of fines and recoveries heretofore passed in any of the courts abolished, as if the same had been levied or suffered in the Common Pleas. And if any person having the custody of any records, die before any further provision is made, the clerk of the peace for the proper county is to have the provisional care of them.

28. Upon fines duly acknowledged before the commencement of this Act, proclamation may be made at the successive assizes to be holden within the county of Chester or the principality of Wales, before the judge of assize, during the continuance of his commission, in the same manner and form, force, and effect, as if the same had been proclaimed before the justices of Chester and Wales, or any of them.

29. Fines and recoveries levied and suffered after the commencement of the Act, of lands, &c. in the county of Chester, the city of Chester, or in Wales, shall be levied and suffered in such and the like manner, and the same officers shall be employed therein, as in the case of fines and recoveries levied or suffered, of lands, &c. in any county of England, not being a county palatine.

30. This Act is not to affect the right of any lessee by patent under the crown, or any pensioner, or other person, entitled to any portion of the money payable upon fines and recoveries in Chester and Wales, but the same is to be paid and payable as heretofore.

31. Where any trusts for charitable uses, or of a public nature, have been cast upon the judges of the courts hereby abolished, by virtue of their offices, the lord chancellor, or keeper of the seals, or the judges of assize upon their circuits in Chester, or Wales, *may appoint other trustees*, with the same power and authority as those for whom they were substituted.

32. Where by law, charter, or usage, any officer ought to take any oath before any of the judges, or other officers

of the courts abolished, such oath may be taken before the judge during the assizes, or in open court at the quarter sessions.

33. The accounts of the sheriffs of the county of Chester and Wales are to be passed, as nearly as possible, in the same manner as heretofore; and the clerk of assize, within ten days after the assizes for Chester, and each county in Wales, is to make out a roll of the names and residences of persons liable to fines, issues, amercements, recognizances, compositions, or other sums imposed and forfeited during the assizes, and transmit the same to the sheriff, with an order signed by the judge of assize, to levy the same; and the sheriff, upon receipt thereof, is to levy and be accountable for the same, and all arrears thereof, and pass his accounts before the same officer as before.

34. The attorney-generals of the counties of Chester and Wales, until the king's pleasure be otherwise declared, are to have in *person* only, and *not by deputy*, the same rank, name of office, privileges, fees, and emoluments as before, except such fees as necessarily cease with the abolition of the courts.

QUARTER SESSIONS.

35. The general quarter sessions, in the year 1831, and afterwards, are to be held

The first week after the 11*th of October;*
The first week after the 28*th of December;*
The first week after the 31*st of March;*
And the first week after the 24*th of June.*

REGULATIONS IN EJECTMENT.

36. By this Act, a power is given to landlords to recover, by action of ejectment, lands and tenements wrongly withheld, more expeditiously than the past practice has permitted: for it enacts that where the tenancy shall expire, or the right of entry into lands or tenements shall accrue to the landlord, in or after Hilary or Trinity terms respectively, the landlord may, at any time within ten days after the tenancy shall expire, or the right of entry accrue, deliver a declaration in ejectment, with notice requiring the tenant, or tenants, to appear and plead thereto in the court in which the action is brought, within ten days.

This declaration must be in the usual form, and be entitled of the day next after the day of the demise in the

declaration, whether such day be in term or vacation; and at the foot of the declaration, a notice in the following form must be subscribed :—

Mr. P. Q.

I am informed that you are in possession of, or claim title to, the premises in this declaration of ejectment mentioned, or to some part thereof: and I, being sued in this action as casual ejector, and having no claim or title to the same, do advise you to appear and plead thereto in his Majesty's Court of King's Bench, at Westminster, within ten days from the receipt thereof, by some attorney of that court, and then and there, by rule of the same court, to cause yourself to be made defendant in my stead, otherwise I shall suffer judgment to be entered against me, and you will be turned out of possession.

Yours, &c. JOHN DOE.

The proceedings, in order to obtain judgment in this declaration, and the rules to appear and plead, must be taken out, and obtained in the same manner, as nearly as possible, as if the declaration had been served before the preceding term;—and if a rule for judgment is not drawn up within the term, a judge's order must be obtained for the clerk of the rules to draw up the rule; but judgment cannot be signed against the casual ejector, until the expiration of *ten days* for the tenant's appearance and plea.

If the tenant or the landlord mean to defend the ejectment, he must enter his appearance, file his plea, and enter into the consent rule;—and if it is the landlord, he must obtain the rule to defend, as is required in the present practice.

Notice.—In proceeding under this act of parliament, the plaintiff must give *six* clear days' notice of trial, (*excluding* the day notice is given, and the commission day,) to the defendant, before the commission day of the assizes at which the ejectment is to be tried.

Postponement.—To prevent any injustice to which a defendant in ejectment might be subjected, from this *short notice* of trial, a judge may, upon good reason, postpone the trial until the next assizes;—and when there is any ground for such an application, a summons can be taken out before a judge of either of the courts, and which must be supported by an affidavit of the facts; and the judge, on hearing the case, will make such order as he thinks proper.

The defendant may also obtain orders for time to appear and plead, or for staying or setting aside proceedings, upon summonses in the same manner.

Record.—In making up the record of the proceedings on any such declaration in ejectment, the declaration may be entitled specially of the day next after the day of the demise, whether such day be in term or vacation, and the judgment will not be avoided, or reversed, by reason only of such special title.

If the plaintiff obtain a verdict in any case of trial of ejectment at *Nisi Prius*, or the plaintiff shall be nonsuited for want of the defendant's appearance to confess lease, entry, or ouster, the judge before whom the cause is tried, may certify his opinion on the back of the record, that a writ of possession ought to issue immediately; and upon such certificate, (which should be produced to the sealer of the writs,) a writ of possession may be forthwith issued.

The costs may be afterwards taxed, and judgment signed and executed at the usual time, as if no such writ had been issued.

The following is the form of the writ of possession, as directed by this Act.

William the Fourth, &c.

To the sheriff of greeting.

Whereas, at the assizes holden at in and for the county of on the day of a certain action of trespass and ejectment, wherein John Doe, on the demise of Thomas Smith, was plaintiff, and Job Ray was defendant, brought for recovery of a certain term of *five* years demised to the said John Doe, yet to come, of and in one messuage, &c. (*here describe the premises exactly as in the declaration,*) wrongfully withheld by the said Job Ray from the said John Doe, came on for trial at *Nisi Prius*, before the honourable *Sir James Parke*, knight, one of the justices of his Majesty's Court of King's Bench at Westminster, upon which the jury found a verdict for the plaintiff, (*or* "wherein the plaintiff was nonsuited, for want of the defendant's appearance to confess lease, entry, or ouster,") and thereupon the said judge certified his opinion on the back of the record, that a writ of possession for recovery of the said term yet to come, of and in the tenements aforesaid, ought to issue immediately. Therefore we command you, that without delay, you cause the said John Doe to have his possession of his term aforesaid, yet to come, of and in the tenements

aforesaid, with the appurtenances; and in what manner you shall have executed this our writ, make appear to us at Westminster, on the day of next, and have you then and there this writ.

Witness, Sir Thomas Denman, knight, at Westminster, the day of in the year of our reign.

B. for W. plaintiff's attorney.

REAL ESTATE MADE LIABLE TO CERTAIN DEBTS.

The statute 1st of Wm. I. c. 47, recites, that "whereas it is not reasonable or just, that by the practice or contrivance of any debtors, their creditors should be defrauded of their just debts, and nevertheless it has often so happened, that where several persons having by bonds, covenants, and other specialties, bound themselves and their heirs, and have afterwards died seised in fee simple of and in manors, messuages, lands, tenements, and hereditaments, or had power and authority to dispose of, or charge the same by their wills and testaments, have, to the defrauding of such their creditors, by their last wills and testaments, devised the same, or disposed thereof in such manner as such creditors have lost their said debts; *for remedying of which*, and for the maintenance of just and upright dealing, be it therefore enacted, that all wills and testamentary limitations, dispositions, or appointments, already made by persons now in being, or hereafter to be made by any person or persons whomsoever, of or concerning any manors, messuages, lands, tenements, or hereditaments, or any rent, profit, term, or charge out of the same, whereof any person or persons at the time of his, her, or their decease, shall be seised in fee simple, in *possession, reversion, or remainder*, or have power to dispose of the same by his, her, or their last wills or testaments, shall be deemed or taken (only as against such person or persons, bodies politic or corporate, and his or their heirs, successors, executors, administrators, and assigns, and every of them with whom the person or persons making any such wills or testaments, limitations, dispositions, or appointments, shall have entered into any bond, covenant, or other specialty, (*binding his, her, or their heirs*,) to be fraudulent, and clearly, absolutely, and utterly void,

frustrate, and of none effect; any pretence, colour, feigned or presumed consideration, or any other matter or thing to the contrary notwithstanding.

And to enable creditors in such cases to recover upon such bonds, covenants, and other specialties, it is enacted, that such creditors shall have and maintain actions of debt or covenant upon such bonds, covenants, and specialties, against the heirs at law of such obligors, covenantors, and devisees, or the devisees of such devisors jointly; and such devisees are liable and chargeable for a false plea by them pleaded, in the same manner as any heir would have been for any false plea by him pleaded, or for not confessing the lands or tenements to him descended.

If there is no heir at law, actions may be maintained against the devisee.

But where there has been any limitation or appointment, devise or disposition, of or concerning any manors, messuages, lands, tenements, or hereditaments, or for the raising or payment of the real and just debt or debts, of any portion or portions, sum or sums of money, for any child or children, according to or in pursuance of any marriage contract or agreement in writing, *bonâ fide* made before such marriage, the same and every of them shall remain in full force, and the same manors, messuages, lands, tenements, and hereditaments, shall and may be holden and enjoyed by such persons and their heirs, executors, administrators, and assigns, for whom the said limitation, appointment, devise, or disposition, was made, and by their trustees, their heirs, &c. for such estate or interest as shall be so limited or appointed, devised, or disposed, until such debts or portions shall be raised, paid, and satisfied, anything in this Act to the contrary notwithstanding.

The heir at law is made answerable for debts, although he may have sold the estate before the action is brought; but where an action of debt is brought against the heir, he may plead that he takes nothing by descent.

Devisees are liable in the same manner as heirs at law.

Traders' estates are made assets to be administered in courts of equity; and creditors by specialty are to be paid first.

Parol is not to demur by or against infants; and infants are to make conveyances under order of the court.

Persons having a life interest may convey the fee, if the estate is ordered to be sold.

ALTERATIONS OF THE LAW IN THE PARLIAMENTARY SESSIONS OF 1833.

By 3 and 4 Wm. IV. c. 27, entitled "An Act for the limitation of actions and suits relating to real property, and for simplifying the remedies for trying the rights thereto," it is enacted, that after the 31st of December, 1833, no person shall make an entry, or distress, or bring an action to recover any land or rent out within *twenty years* next after the time at which *the right* to make such entry or distress, or to bring such action shall have *first accrued* to *any person through whom he claims*; or if such right shall *not have accrued* to any person through whom he claims, then within *twenty years* next after the time at which the right to make such entry or distress, or to bring such action, shall have *first accrued* to the person *making* or *bringing* the same.

The *right* to make such entry, or distress, or bring such action to recover land or rent, is to be deemed to have *first accrued*, in the following instances:—

1. When the person claiming such land or rent, or some person through whom he claims, shall, in respect of the estate or interest claimed, *have been in possession* or in *the receipt of the profits of such lands*, or in *receipt of such rent*; and shall, *while entitled thereto*, have been *dispossessed*, or have *discontinued* such possession or receipt, then such *right* shall be deemed to have *first accrued*, at *the time* of such dispossession, or *discontinuance* of possession, or at the *last time* when any such profits or rent were *received*.

2. When the person *claiming* such land or rent shall claim the estate or interest of some *deceased person*, who shall have *continued* in such possession or receipt, in respect of the *same* estate or interest, *until the time of his death*, and shall have been the *last person* entitled to such estate or interest who shall have been in such *possession* or *receipt*, THEN such right shall be deemed to have *first accrued* at *the time of such death*.

3. When the person claiming such land or rent shall claim in respect of an estate or interest *in possession*, granted, appointed, or otherwise assured by any instrument (except a *will*) to him, or some person through whom he claims, by *a person* being in respect of the *same*

estate or interest in the *possession* or *receipt* of the profits of the land, or in the *receipt of rent*, and *no* person entitled under *such instrument* shall have been in such possession or receipt, THEN such right shall be deemed to have *first accrued* at *the time* at which the person claiming as aforesaid, or the person through whom he claims, became *entitled* to such possession or receipt, by virtue of such instrument.

4. When the estate or interest claimed shall have been an estate or interest in *reversion* or *remainder*, or other *future* estate or interest, and *no person* shall have obtained the possession or receipt of the profits of such land, or the receipt of such rent in respect of *such* estate or interest, THEN such right shall be deemed to have *first accrued* at *the time* at which such estate or interest *became* an estate or interest *in possession*.

5. When the person claiming such land or rent, or the person through whom he claims, shall have become entitled by reason of any *forfeiture*, or *breach of condition*, THEN such *right* shall be deemed to have *first accrued*, when such forfeiture was *incurred*, or such condition *broken*. Section 2.

When any *right* to make an entry or distress, or to bring an action to recover any land or rent, for any forfeiture or breach of condition, shall have *first accrued* in respect of any estate or interest in *reversion* or *remainder*, and the land or rent shall *not* have been recovered by *virtue of such right*, the right to make an entry or distress, or bring an action to recover such land or rent, shall be deemed to have *first accrued* in respect of such estate or interest, at *the time* when the same shall have *become* an estate or interest in possession, as if *no* such forfeiture or breach of condition *had happened*. Sect. 4.

A right to make an entry or distress, or to bring an action to recover any land or rent, shall be deemed to have *first accrued* in respect of an estate or interest *in reversion*, at *the time* at which the same shall have *become* an estate or interest in *possession* by the *determination* of any estate in respect of which such land shall have been *held*, or the profits thereof, or such rent shall have been *received*, notwithstanding the person *claiming* such land, or the person *through whom* he claims, shall at any *time previously* to the *creation* of the estates which *shall have determined*, have been in possession or receipt of the profits of such land, or in receipt of such rent. Sect. 5.

An *administrator*, claiming the estate or interest of a

deceased person, shall be deemed to claim as if there had been *no interval* of time between *the death* of such deceased person, and the *grant* of the letters of administration. Sect. 6.

When any person shall be in possession or in receipt of the profits of any land, or in receipt of any rent as tenant at will, the *right* of the person *entitled, subject thereto*, or of the person *through whom* he claims, shall be deemed to have *first accrued* either at the *determination* of such *tenancy*, or at the expiration of *one year* after the commencement of such tenancy, at which time such tenancy shall be determined; but no *mortgagor*, or *cestuique trust*, shall be deemed to be a tenant at will, within the meaning of this clause, to his mortgagee or trustee. Sect 7.

When any person shall be in possession, or in receipt of the profits of any land, or in receipt of any rent as tenant from *year to year*, or other period, *without* any lease in *writing*, the *right* of the person entitled, *subject thereto*, or of the person through whom he claims, to make an entry or distress, or to bring an action to recover such land or rent, shall be deemed to have *first accrued* at the determination of the *first* of such *years*, or *other periods*, or at the *last time* when any rent payable in respect of such tenancy shall have been received, (which shall *last* happen). Sect. 8.

When any person shall be in possession as aforesaid, by virtue of *a lease in writing*, reserving a yearly rent of twenty shillings and upwards, and such reserved rent has been received by some person *wrongfully* claiming to be entitled, in *reversion* immediately expectant on the *determination* of such lease, and no payment shall have been afterwards made to the person *rightfully* entitled, the right of the person *rightfully* entitled, subject to such lease, shall be deemed to have *first* accrued at *the time* when the reserved rent was first received by the person *wrongfully* claiming, and not upon the *determination of the lease* to the person rightfully entitled. Sect 9.

No person is deemed in possession of any land within the meaning of this Act, merely by reason of *making an entry thereon*. Sect. 10.

Nor does any *continual*, or *other* claim, upon or near any land, preserve any right of making an entry or distress, or of bringing an action. Sect. 11.

When *one* or *more* of *several persons* entitled to any land or rent as copartners, joint-tenants, or tenants in common, have been in possession or receipt of the *entirety*,

or *more* than his or their undivided share or shares of such land, or of the profits, or rent thereof, for his or their own benefit, or the benefit of any other persons other than the persons *entitled* to the other share or shares of the land or rent, *such possession* or *receipt* shall *not* be deemed to have been the *possession* or *receipt* of or by such *last-mentioned persons*, or any of them. Sect. 12.

The possession or receipt of rents, &c. of a *younger brother*, or any *other relation* to the person entitled as heir, is *not* to be deemed the possession or receipt of the heir. Sect. 13.

When any *acknowledgment in writing* of the title of the person entitled is given to him or his agent, signed by the person in possession, the possession of such person giving such acknowledgment is deemed the possession of the person to whom the acknowledgment is given; and the *right* of such person *first accrues at*, and *not before* the time at which such *acknowledgment*, or *the last* of such acknowledgments, if more than one, was given. Sect. 14.

Where no such acknowledgment before July, 24, 1833, (the date of the passing of the Act,) and the possession or the receipt of profits at that time was *not* adverse to the right or title of the person claiming to be entitled thereto, then such person, or the person claiming through him, may, *notwithstanding* the period of twenty years before limited may have *expired*, make an *entry*, or *distress*, or bring an actic : to recover such land and interest, at any time within five years next after the passing of this Act. Sect. 15.

Persons unable to assert their rights when they *first* accrue, through such disabilities as infancy, coverture, idiotcy, lunacy, unsoundness of mind, or absence beyond the seas, and persons claiming through them, may, notwithstanding the limitation of twenty years, make entries, bring actions, &c. at any time *within ten years next after the time at which the person to whom such right shall have first accrued, shall have* ceased to have been under such disability, or shall have died, (which shall have first happened.) Sect. 16.

But no entry, distress, or action shall be made or brought by any person who, when his right *first accrued*, laboured under any of the disabilities before mentioned, or by any person *claiming through him*, but within FORTY YEARS next after the time when such right *first accrued*, although the person so labouring under such disabilities, remained under one or more of them during the *whole*

of such *forty years*, or although the term of *ten years*, from the time when he ceased to be under such disability, or have died, shall *not* have expired. Sect 17.

Where any person *dies* under the influence of any of the aforesaid disabilities, no time to bring actions, &c. is allowed beyond the aforesaid twenty years, or the period of ten years of the death of the party, *by reason of the disability of any other person*. Sect. 18.

Scotland, Ireland, and the *adjacent islands*, are *not* to be deemed *beyond seas* under this statute. Sect. 19.

20. When the right to an estate in possession is barred by the termination of the period before limited, the right of the same person to any future estate, interest, &c. in or to the same property is also barred.

21. And where the tenant in tail is barred by lapse of time, no claim can be made to recover, by any remainder-man whom he might have barred, if he had come into possession.

22. If a tenant in tail happen to die, before the expiration of the period in which he might have recovered, those who claim under him can only do so within the *remainder* of the period so limited, during which he might have claimed himself.

23. Where possession has been had under an assurance by a tenant in tail, which does *not* bar the remainder-men, they will be barred at the end of *twenty years* after the time when the assurance, if then executed, would bar them.

24. No suit in *equity* can be brought after the time when the plaintiff, if entitled at law, might have brought his action at law.

25. But in cases of *express trust*, the right is not to be deemed to have accrued, until a conveyance has been made to an absolute purchaser; and then the right accrues as against such purchaser, and persons claiming through him.

26. And in cases of fraud, *no time is to run* against the periods limited, while the fraud remains concealed; saving (s. 27.) the jurisdiction in *equity*, on the ground of acquiescence of the parties, or otherwise.

28. The mortgagor cannot bring an action against the mortgagee, except within twenty years of the time when the mortgagee obtained possession, or from the date of the *last written acknowledgment* of the right by the mortgagee of the mortgagor's right of redemption.

29. No lands or rents can be recovered by ecclesiastical

or eleemosynary corporations sole, except within *two incumbencies* and *six years*, or a whole period of *sixty years;* and (s. 30.) no advowson can be recovered except within *three incumbencies*, or a whole period of *sixty years;* and (s. 31.) incumbencies *after lapse* are to be reckoned *within* the period, but not incumbencies after promotion to bishoprics. Also (s. 32.) persons claiming an advowson in remainder, &c. which the owner of an estate tail in the advowson might have barred, are also barred of the right of process to recover; and (s. 33.) no advowson can be recovered after the lapse of *one hundred years.*

34. The right of any party out of possession at the period limited by this Act for taking process, is extinguished;—the receipt of rent (s. 35.) is to be deemed receipt of profits;—and all real and mixed actions (s. 36.) are to be abolished from the 31st of December, 1834; but (s. 37.) real actions may be brought by persons not having a right on the 31st of December, 1834, and whose right accrues after that date, until the 1st of June, 1835; saving (s. 38.) on the said 1st of June the rights of persons entitled to real actions at the commencement of this Act, and (s. 39.) no descent, cast, discontinuance, or warranty happening after December 31, 1833, shall toll or defeat any right of entry or action for the recovery of land.

40. Money charged upon land and legacies is to be deemed paid and satisfied in full at the end of twenty years, if there be *no interest paid* during that period, nor any *acknowledgment* in *writing* in the mean time;—and (s. 41.) no *arrears* of dower can be recovered for more than *six years* before the commencement of the suit to recover;—nor (s. 42.) can any *arrears* of *rent* or *interest* be recovered for more than six years after they become due, or after an acknowledgment in writing given to the claimant that they are so due; except where a prior mortgagee, &c. has been in possession one year before suit brought by an after mortgagee, when the after mortgagee may recover arrears, during the *whole time* the prior mortgagee was in possession, though *exceeding* six years.

43. This Act is extended, and applicable to proceedings in the *spiritual* courts; but (s. 44.) *not* to *Scotland*, nor to *advowsons* in *Ireland.*

The importance of the preceding statute, with reference to the periods of *time*, within which rights may be sued for, and recovered, is, perhaps, equalled in the value of the object it embraces by the Act of 3 & 4 Wm. IV. c. 74, which is intended to define with suitable accuracy the

powers of persons in *possession* of estates, &c. with reference to the partial or absolute disposal of existing rights. The following is a practical abstract of its provisions; and although there is some perplexity in the original, almost incidental to a first review of the complicated nature of tenures in *England*, the leading objects are stated with tolerable perspicuity; and the Act on the whole has made some progress towards the establishment of more general principles, which, at no distant period, will no doubt be amalgamated in one general law upon the whole subject.

"For the *abolition* of *fines* and *recoveries*, and the *substitution* of more simple assurance," in the possession and settlement of estates, the 3 & 4 Wm. IV. c. 74, enacts (s. 2.) that no fine or recovery shall be levied after December 31, 1833; after which (s. 3.) persons liable to levy fines and suffer recoveries under covenants, are to effect them under the provisions of this Act; but where the purpose of such fine and recovery cannot be so effected, the persons liable to levy fines or suffer recoveries, shall execute a deed which shall have the same operation as the fine or recovery.

4. Fines and recoveries of land in ancient demesne, when levied or suffered in a superior court, may be reversed as to the lord of the manor by writs of deceit, the proceedings of which were pending at the passing of this Act, or which may hereafter be brought; but they are to remain valid against the parties thereto, and all persons claiming under them, as if they were not reversed with reference to the lord of the manor. Such fines and recoveries of lands in ancient demesne, (s. 5.) levied or suffered in the manor-court, after other fines and recoveries in a superior court, shall be as valid as if the tenure had not been changed; and fines and common recoveries shall be valid in other cases, though levied in courts whose jurisdiction may not extend to the lands therein comprised.

6. The tenure of ancient demesne, where *suspended* or *destroyed* in a superior court, may be restored in cases where the rights of the lord of the manor have been recognized within *twenty* years; but no writ of deceit for the reversal of any fine or common recovery shall be brought after December 1, 1833.

7. Fines and recoveries (s. 8.) are made valid without amendment of any omission, misdescription, &c. where it is apparent the lands, &c. to which they relate, were intended to pass, saving the jurisdiction of the court (s. 9.) in cases not provided for by this Act. And recoveries

(s. 10.) may be made valid in cases where the bargain and sale is not duly enrolled, where the enrolment would have made them valid; and recoveries (s. 11.) invalid in consequence of there not being proper tenants to the writs of entry, where the owner, or person having power to dispose of an estate for life in the rents, &c. shall within the time limited for making the tenant to the writ for suffering such recovery, have conveyed or disposed of such estate in possession to the tenant of the writ.

12. But fines and recoveries wholly reversed before the passing of this Act, are not made valid; where part only has been reversed, the part reversed is not made valid; where persons who would have been barred by valid fines or recoveries, have dealt with such lands on the faith of the fines, &c. being invalid, they are not made valid; nor does this Act make valid fines, &c. as to lands, &c. of which persons were in possession on its passing, which the fine, &c. if valid, would have barred, or which any court would have refused to amend; nor does this Act prejudice any proceedings pending on its taking effect; and if such proceedings abate by any cause, as death, &c. they may be renewed within six calendar months.

13. The records of fines and recoveries, in the Common Pleas at Westminster, are to be kept by such persons, and in such places, as the court may direct; those of Durham and Lancaster, where and by whom the justices of assize may appoint, and searches, &c. may be made on payment of the customary fees.

14 Estates tail, and estates expectant thereon, are no longer barrable by *warranty* of possession; and (s. 13.) persons in possession, remainder, contingency, or otherwise, may dispose of lands vested in fee simple, or for a less estate, against all persons, *including* His Majesty, &c. whose estates are to take effect after the determination or in defeasance of any such estate tail; but saving the right of persons *prior* to the estate tail, and others, except those against whom such disposition is made; but (s. 16.) this power of disposition is not to be exercised by women tenants in tail, under 11 Hen. VII. c. 20, without such assent as required by that Act, with reference to settlements (s. 17.) made before the passing of this Act; after which the 11 Hen. VII. is repealed. Nor (s. 18.) does this power of disposition extend to tenants in tail, restrained by statute from barring their estates tail, nor to tenants in tail after possibility of issue extinct.

19. Where an estate tail has been barred and converted

into a base fee, on or before December 1, 1833, the person who, if it had not been done, would have had power to dispose of such lands against all persons, &c. may enlarge the base fee into a fee simple absolute, saving, &c. as in s. 16;—but (s. 20.) no person can dispose of entailed land in respect of any *expectant* interest, as issue inheritable to the estate.

21. A disposition of lands in tail on mortgage, or other limited purpose, is an absolute bar in law and equity to all persons as against whom such disposition is made; but if such disposition is for *another life*, or *years absolute*, or *determinable*; or if the tenant in tail only create a charge, &c. without term of years absolute or determinable, or any greater estate for securing the same, the disposition shall only be such bar as may give effect to the mortgage, &c.

22. The owner of a first existing estate under a settlement, prior to an estate tail under the same settlement, is to be the protector of the settlement;—and (s. 23.) each of two or more owners of a prior estate to be the sole protector, as to his own share.

24. The husband and wife are to be joint protectors of settlement, where not settled on the wife for her separate use; where it is so settled, the wife is to be the sole protector;—but (s. 25.) in estates limited by settlement for confirmation or restoration, it shall be deemed an estate under such settlement; except (s. 26.) in cases where leases at rents are so granted, of which the lessee is not to be protector of the settlement;—and (s. 27.) no woman as tenant in dower, nor any bare trustee, heir, executor, &c. shall be the protector of a settlement;—except (s. 31.) a bare trustee before the passing of this Act.

28. Where the owner of the prior estate is excluded by the two last clauses, the person who would be the protector, if the first did not exist, shall be the protector; and (s. 29.) on the disposal of an estate, the person who would have been tenant to the writ of entry, &c. shall be the protector, and the same (s. 30.) in cases to persons entitled to remainders, &c.

32. Settlers entailing lands may appoint protectors of settlements; and (s. 33.) and (s. 35.) in cases of lunacy, the lord chancellor, or lord keeper, or other persons entrusted with lunatics; or in cases of high treason, or felony, &c. the Court of Chancery to be the protector.

34. The consent of the protector is requisite to enable an actual tenant in tail to create a larger estate than a

base fee; and (s. 35.) where a base fee has been so created, the consent of the protector is requisite for exercising the power of disposition; and (s. 36.) the protector is subject to no control in the exercise of his power of consenting; neither (s. 37.) are the rules of equity as to dealings between the donee of a power, and the object in whose favour it is exercised, to apply to dealings between the protector and the tenant in tail of the same settlement on the protector's consent being given.

38. A voidable estate by a tenant in tail, in favour of a purchaser, is confirmed by a subsequent disposition of such tenant in tail under this Act; but not against a purchaser without notice.

39. Base fees, when united with immediate reversions, are enlarged to as large an estate as the tenant in tail might have created by disposition, if the remainder vested in any other person.

40. The tenant in tail may make a disposition by *deed*, as if seized in fee; but not by will or contract; and a married woman must do so with the concurrence of her husband.

41. Every assurance by a tenant in tail, except a lease not exceeding twenty-one years, at a rack-rent, or not less than five-sixths of a rack-rent, is inoperative, unless enrolled in the Court of Chancery within six months, 28 Hen. VIII. c. 16.

42. The consent of the protector must be given by a distinct deed, or by the same assurance; and (s. 43.) if by distinct deed, it must refer to the assurance; and (s. 44.) the protector cannot revoke his consent.

45. A married woman who is protector may consent, as a single woman might do, to the disposition of a tenant in tail; and all consents (s. 46.) are void, unless enrolled with or before the assurance.

47. Courts of equity are excluded from giving any effect to dispositions by tenants in tail, or consents of protectors in settlements, which in courts of law would not be effectual; but in cases of idiotcy, &c. (s. 48.) the lord chancellor, &c. has power to consent to a disposition by a tenant in tail, and to make such orders as may be necessary; and if any other person is joint protector, the disposition is not valid without the consent of the lord chancellor, &c. whose order (s. 49.) is to be evidence of his consent.

50. The previous clauses apply also to copyholds generally; but there are some exceptions in the following

clauses, with respect to copyholds; such as (s. 51.) if the consent to the disposition of copyhold lands is given by *deed*, such deed shall, at or before the time of surrender, be executed by the protector, and produced to the lord of the manor, or his steward, or deputy, and the consent is void, unless the deed is so executed and produced. On the production, the lord of the manor, &c. shall acknowledge the production within the time limited, by indorsing the fact in writing, under his own hand, and enter the deed, &c. on the court-rolls, the indorsement to be *prima facie* evidence of the fact, and the lord of the manor, &c. must also indorse a memorandum signed by him, testifying such entry on the court-rolls. If such consent be *not* given by *deed*, (s. 52.) the consent must be given by the protector to the person taking the surrender; and if surrender be made out of court, it must be stated in the memorandum, signed by the protector, that consent was given; and the lord of the manor, &c. must enter such memorandum on the rolls, which entry, or a copy, is made evidence. But if surrender is made in court, the lord of the manor, &c. will make an entry with consent on the rolls, a copy of which is made evidence.

53. Equitable tenants in tail of copyhold estates may dispose of them by deed; and (s. 54.) no enrolment is necessary as to copyholds.

55. The bankrupt act, 6 Geo. IV. c. 16, s. 65, is *repealed*, so far as relates to estates tail; but not with respect to the lands of a bankrupt under a commission or fiat issued on or before December 31, 1833; nor to revive any former acts; but (s. 56.) the commissioner, in case of an actual tenant in tail becoming bankrupt after December 31, 1833, may dispose of the lands of the bankrupt; and (s. 57.) the commissioner may also, by deed, dispose of the lands of the bankrupt, where there is no protector, and the bankrupt is a tenant in tail entitled to a base fee; such commissioner (s. 58.) standing in the place of the tenant, and with the consent of the protector, if any; and (s. 59.) every deed by which such commissioner may dispose of lands, &c. shall be void, unless enrolled in chancery within six months after execution; copyhold lands, &c. must be entered on the court-roll of the manor; if there be a protector who gives consent by a *distinct deed*, it is void, unless the deed be executed on or before the day when the deed is executed by the commissioner; the deed of consent must also be entered on the roll by the lord of the manor, &c. on whom it is imperative to enter it, and

he must also indorse the deed, &c. with a memorandum of such entry.

60. Base fees created by the commissioners may be subsequently enlarged into the same estate, if there cease to be a protector, which the commission could have created, if there had been no protector at the time; and (s. 61.) this may be done subsequent to the sale or conveyance of the estate under the bankrupt acts.

62. A voidable estate created in favour of a purchaser by an actual tenant in tail becoming bankrupt, or by a tenant in tail entitled to a base fee becoming bankrupt, may be confirmed by the commissioner, if no protector, or ceasing to be one, or with his consent if there be one, but *not* against a purchaser without notice; and (s. 63.) all acts of a bankrupt tenant in tail are void against any such disposition by a commissioner; but (s. 64.) a bankrupt tenant in tail shall retain his powers of disposition, *subject* to the power given to the commissioners, and to the estate in the assignees; and (s. 65.) if the bankrupt be dead, the disposition of the commissioners shall have the same operation as if he were alive.

66. The disposition of copyhold lands by the commissioners, where the estate shall not be equitable, will have the same operation as a surrender, and the person to whom it is disposed may claim admission on paying the usual fines.

67. The assignees may recover rents of the lands, &c. of a bankrupt, of which the commissioner can dispose; and enforce covenants as if entitled to the reversion; and this also of copyholds; but as to other lands, only on such as the commissioners may dispose of after the bankrupt's death, 11 Geo. II. c. 19. All these provisions with regard to bankrupts (s. 68.) applies to lands in Ireland; the deeds relating to which (s. 69.) must be enrolled in the Irish Court of Chancery.

70. This clause repeals 7 Geo. IV. c. 45, except as to proceedings commenced before January 1, 1834: but 39 and 40 Geo. III. c. 56, is not thereby revived; and (s. 71.) the previous clauses generally apply to lands of any tenure to be sold, where the money is subject to be invested in the purchase of lands to be entailed, and where money is subject to be invested in the same manner; except where a disposition is made of *leasehold* land for years absolute and determined, or of money so circumstanced, the leasehold or money shall be treated as personal

estate of the person in whose favour it is made; but the assurance must be an *assignment* by *deed*, and is void unless enrolled in chancery within *six* months, except in cases of bankruptcy, where the disposition must be made by the commissioners, and completed by enrolment, as of lands not held by copy of court-roll.

72. Lands of any tenure in *Ireland* to be sold, where the purchase-money is subject to be invested in the purchase of lands to be entailed, and money under the control of the court of equity in Ireland, subject to be invested in like manner, to be subject to this Act in cases of bankruptcy.

73. Deeds under this Act are not required to be acknowledged *before* they are enrolled either in England or Ireland; and (s. 74.) deeds by which money or lands are disposed of, take effect as if enrolment were not required. The court of chancery (s. 75.) is to regulate the fees, &c. for enrolment in England and Ireland; and (s. 76.) the Court of Common Pleas at Westminster is to regulate the fees for entries on court-rolls, indorsements of deeds, taking consents, &c.

77. A married woman, with her husband's consent, may dispose of lands and money, subject to be invested in the purchase of lands, and of any estate therein; and may relinquish and extinguish powers as a *femme sole;* but this does not extend to copyholds in which before the passing of this Act the objects of this clause could have been effected, with the concurrence of her husband, by surrender to the lord of the manor; and (s. 78.) the powers given to a married woman by this Act are not to interfere with any other powers.

79. Deeds executed by married women *not* executed as protectors, must be acknowledged before one of the judges, a master in chancery, or two perpetual, or two special commissioners, to be appointed (s. 81.) by the chief justice of the Common Pleas, removable at pleasure, in every county, division, place, &c. where there may be a clerk of the peace; to whom lists are to be transmitted by the officer of the Common Pleas, where the certificates are to be kept, without any fee; and such clerk of the peace must deliver a copy of such list to any person applying; and (s. 82.) the commissioners may take such acknowledgments of deeds of a married woman wherever she may reside, or wherever the lands or money may be;—but (s. 80.) before taking any such acknowledgment, she must

be examined apart from her husband, as to her knowledge and voluntary consent, without an express declaration of which the deed is void.

83. Special commissioners may be appointed by any judge of the Common Pleas, to take the acknowledgments of married women beyond the seas, or where from ill health, or other sufficient cause, it may be necessary.

84. The officers taking such an acknowledgment must sign a memorandum to be indorsed on, or written at the foot, or in the margin of the deed, which may be in the following form :—

"This deed, marked [*here add some letter or other mark for the purpose of identification,*] was this day produced before me [*or* us] and acknowledged by therein named, to be her act and deed; previous to which acknowledgment the said was examined by me [*or* us], separately and apart from her husband, touching her knowledge of the contents of the said deed, and her consent thereto, and declared the same to be freely and voluntarily executed by her."

And the same officer must also sign a certificate of taking such acknowledgment on a separate piece of parchment, in the following form :—

"These are to certify, that on the day of in the year one thousand eight hundred and before me, the undersigned sir Nicholas Conygham Tindal, lord chief justice of the Court of Common Pleas at Westminster, [*or* before me, sir James Park, knight, one of the justices of the Court of King's Bench at Westminster; *or* before me, the undersigned James William Farrer, one of the masters in ordinary of the Court of Chancery; *or* before us A. B. and C. D., two of the perpetual commissioners appointed for taking the acknowledgment of deeds by married women, pursuant to an act passed in the third and fourth year of the reign of his Majesty King William the Fourth, entitled 'An Act for the abolition of Fines and Recoveries, and for the substitution of more simple modes of assurance;' *or* before us E. F. and G. H. two of the commissioners specially appointed pursuant to an Act, &c. [*as before*] for taking the acknowledgment of any deed by the wife of] appeared personally the wife of , and produced a certain

indenture, marked [*here add the mark*], bearing date the day of and made between [*here insert the names of parties*] and acknowledged the same to be her act and deed. And I [*or* we] do hereby certify, that the said was, at the time of her acknowledging the said deed, of full age and competent understanding, and that she was examined by me [*or* us], apart from her husband, touching her knowledge of the contents of the said deed, and that she freely and voluntarily consented to the same."

85. The certificate, with an affidavit verifying the same, must be lodged with some officer of the Court of Common Pleas, who shall file it of record in the court; and (s. 86.) on filing the record shall take effect from the time of acknowledgment. The officer (s. 87.) must also make an *index* of the certificates lodged, and (s. 88.) deliver a copy of the certificate filed, which shall be evidence. The chief justice (s. 89.) of the pleas is to appoint such officer; and the court to make orders on all matters relating to the certificates.

90. Married women are also to be separately examined on the surrender of an *equitable* estate in copyholds, as if the estate were legal; and (s. 91.) where the husband is lunatic, the Court of Common Pleas, may dispense with his concurrence, except where the lord chancellor, or others, having the care of lunatics, are protectors of a settlement in lieu of the husband.

92. This Act does not extend to *Ireland*, except where expressly mentioned.

It is purposed to follow up these alterations of the law with a variety of minor, but very requisite amendments, one of which is about to be proposed by Lord Wynford, and will most probably be speedily adopted, namely, to authorise plaintiffs obtaining judgment on any action in *England*, to sue out execution in *Ireland* (and the reverse), without the necessity of bringing fresh actions in the separate countries, which is now the case to a considerable extent. Such an alteration would not only benefit plaintiffs who have commenced actions, but would prevent many from being brought into court.

NATURE, JURISDICTION, &c.

OF THE VARIOUS

COURTS OF LAW.

ALTHOUGH it would be both tedious and unprofitable to enter into any minute history of the origin of the various courts in which suits are carried on in law and equity, a brief description of their nature may be useful, as illustrating their general practice.

A court signifies a place where justice is judicially administered, of which some courts are of *record*, and some are not. A *court of record* being one which has power to hold pleas, according to the course of common law, of real, personal, and mixed actions; and a court *not* of record, is where the proceedings are *not* according to the course of common law, nor yet enrolled;—for in courts where writs are not issuable, the suit is begun by plaint, *viz.* by entering the action, the cause of complaint, &c.; and in inferior courts, having particular jurisdictions, it must be set forth at large, for there nothing shall be extended to be within the jurisdiction, but what is expressly alleged to be so.

THE HOUSE OF LORDS

Is generally called the supreme court of judicature in the kingdom; although it has no original jurisdiction over causes, nor can any be commenced there; as it proceeds only upon writs of error, or on appeals, against the supposed mistake or injustice of the courts below. It is, however, when it can be appealed to, the last resort, and its decision is irrevocably final.

THE COURT OF CHANCERY

Is the next highest court of judicature in the kingdom, and is of very ancient institution. Its jurisdiction is of two

kinds, ordinary or legal, or extraordinary or absolute. The *ordinary* court is that wherein the lord chancellor, in his proceedings and judgments, observes the order and method of the common law; and, in such cases, the proceedings are filed or enrolled in the *Petty-bag Office*.

This court holds plea of recognizances acknowledged in chancery, writs of *scire facias* for repeal of letters patent, writs of partition, &c. and also of all personal actions by or against any officer of the court, and, by Acts of Parliament, of several offences and causes. All original writs, commissions to inquire of charitable uses, and of idiots and lunatics, &c. issue out of this court, for which it is always open; and *subpœnas* may be issued to force witnesses to appear in other courts, when they have no power to call them. But, in prosecuting causes, if the parties descend to issue, this court cannot try it by jury; the record is sent into the Court of King's Bench, and tried there, and afterwards remanded into the Courts of Chancery; but if there be a demurrer in law, it shall be argued and adjudged here.

The *extraordinary* or *unlimited court* exercises jurisdiction in cases of equity, by way of *English* bill and answer, in abating the rigour of the common law; and where the courts of law are defective, it gives a remedy. It gives relief for and against infants, notwithstanding their minority; and for or against married women, called *femme coverts*, notwithstanding their coverture. All frauds and deceits are here relievable; as also all accidents to mortgagors, obligors, &c. against penalties and forfeitures, where the intention was to pay the debt; all breaches of trust, unreasonable engagements, &c. This court may force unreasonable creditors to compound debts; make executors, &c. give security, and pay interest for money long in their hands; and here executors may sue one another, or one executor alone be sued without the rest; order may be made for the performance of a will; a decree may be made, declaring who shall have the tuition of a child; and this court may relieve copyholders against the ill usage of their lords; confirm title to lands, where the deeds are lost; make conveyances, defective through fraud or mistake, good and perfect; oblige men to come to account with each other; and sometimes avoid the bar of actions by the Statute of Limitations, &c.

But in all cases where the plaintiff can have his remedy at law, he will not be relieved in chancery; and long leases, as for one thousand years, naked promises, verbal

agreements not executed, estates derived under concealed titles, &c. have been refused relief in this court; and mortgages are not relievable in equity after twenty years, where no demand has been made, or interest paid, &c. Also this court will not retain a suit for any thing under £10 value, except it be in cases of charity; nor for lands, &c. under 40*s. per annum;* and it refuses to relieve persons in suits where the substance of them tends to the overthrow of any fundamental point of the common law, or Act of Parliament.

But, although the power of the Court of Chancery, in its equitable proceedings, is so great in the foregoing particulars, it is no court of record, and therefore can bind the person only, and not the estate of the defendant; and if the party refuse to obey the decree of this court, he must be committed until he does; in this case, if there be an order that one shall stand committed to the Fleet for breach of a decree, there must be a writ awarded for taking and imprisoning him.

No *subpœna* or process is to issue out of this court till a bill is filed, except in injunctions to stay waste, and suits at law, &c.; and on a plaintiff's dismissing his bill, or the defendant, for want of prosecution, the plaintiff is to pay full costs. A defendant not appearing on *subpœna* issued, and absconding to avoid being served therewith, the court may make an order for his appearance at a certain day, which shall be published in the *Gazette;* and if he do not appear, the plaintiff's bill shall be taken *pro confesso*, and the defendant's estate sequestrated to satisfy the plaintiff.

The lord chancellor, who presides in this court, is created such by the mere delivery of the king's great seal into his custody; whereby he becomes, without writ or patent, an officer of the greatest weight and power of any now subsisting in the kingdom, and superior in point of precedency to every temporal lord. He is a privy-counsellor by his office, and, according to lord chancellor Ellesmere, prolocutor of the House of Lords by prescription. To him belongs the appointment of all justices of the peace throughout the kingdom. Being, formerly, usually an ecclesiastic (for none else were then capable of an office so conversant in writings,) and presiding over the royal chapel, he became keeper of the king's conscience; visitor, in right of the king, of all hospitals and colleges of the king's foundation; and patron of all the king's livings under the value of twenty marks *per annum* in the

king's books. He is the general guardian of all infants, idiots, and lunatics; and has the general superintendence of all charitable uses in the kingdom. And all this, over and above the vast and extensive jurisdiction which he exercises in his judicial capacity in the Court of Chancery.

VICE-CHANCELLOR'S COURT.

In consequence of the extreme pressure of business in the Court of Chancery, this court was created by an act of the 53 Geo. III. c. 24, for the express purpose of assisting the lord chancellor in his judicial functions; and, therefore, all causes which were before heard by the lord chancellor, may now be heard and decided in the vice-chancellor's court; but his judgments and decrees are to be signed by the lord chancellor, who has also the authority to reverse, discharge, and alter them.

The vice-chancellor has rank next to the master of the rolls, and is attended by a secretary, train-bearer, and usher. His office is held during good behaviour; and he may be removed by the king, upon an address of both houses of parliament.

The commencement of a suit in chancery is by preferring a *bill* to the lord chancellor, in the style of a petition, "Humbly complaining, showeth to your lordship, your orator, A. B. that, &c. in tender consideration whereof, and for that your orator is wholly without remedy at the common law," relief is therefore prayed at the chancellor's hands, and also process of *subpœna* against the defendant, to compel him to answer upon oath to all the matters charged in the bill. And if it be to quiet the possession of lands, to stay waste, or to stop proceedings at law, an *injunction* is also prayed in the nature of an *interdictum* by the civil law, commanding the defendant to cease.

This bill must call all necessary parties, however remotely concerned in interest, before the court, otherwise no decree can be made to bind them; and must be signed by counsel, as a certificate of its decency and propriety. For it must not contain matter either scandalous or impertinent; if it do, the defendant may refuse to answer it, till such scandal or impertinence be expunged; which is done upon an order to refer it to one of the officers of the court, called a master in chancery, of whom there are twelve, including the master of the rolls. The master is

to examine the propriety of the bill; and if he report it scandalous or impertinent, such matter must be struck out, and the defendant shall have his costs.

When the bill is filed in the office of the six clerks, if an injunction be prayed therein, it may be had at various stages of the cause, according to the circumstances of the case. If the bill be to stay execution upon an oppressive judgment, and the defendant do not put in his answer within the stated time allowed by the rules of the court, an injunction will issue of course; and when the answer comes in, the injunction can only be continued upon sufficient ground appearing from the answer itself. But if an injunction be wanted to stay waste, or other injuries of an equally urgent nature, then, upon the filing of the bill, and a proper case supported by affidavits, the court will grant an injunction immediately, to continue till the defendant has put in his answer, and till the court shall make some further order concerning it; and when the answer comes in, whether it shall then be dissolved, or continued till the hearing of the cause, is determined by the court upon argument.

But, upon common bills, as soon as they are filed, process of *subpœna* is taken out; which is a writ commanding the defendant to appear and answer to the bill, on pain of £100. But this is not all; for if the defendant, on service of the subpœna, do not appear within the time limited by the rules of the court, and plead, demur, or answer to the bill, he is then said to be in *contempt;* and the respective processes of contempt are in successive order awarded against him. The first is an *attachment*, which is a writ in the nature of a *capias*, directed to the sheriff, and commanding him to attach, or take up the defendant, and bring him into court.

If the sheriff return that the defendant *non est inventus*, then an *attachment with proclamations* issues; which, besides the ordinary form of attachment, directs the sheriff, that he cause public proclamations to be made throughout the county, to summon the defendant, upon his allegiance, personally to appear and answer.

If this be also returned with a *non est inventus*, and he still stands out in contempt, a *commission of rebellion* is awarded against him, for not obeying the king's proclamation, according to his allegiance; and four commissioners therein named, or any of them, are ordered to attach him, wheresoever he may be found in Great Britain, as a rebel and contemner of the king's laws and

government, by refusing to attend his sovereign when required.

If, upon this commission of rebellion, a *non est inventus* is returned, the court then sends a serjeant-at-arms in quest of him; and if he elude the search of the serjeant also, then a *sequestration* issues to seize all his personal estates, and the profits of his real, and to detain them, subject to the order of the court. After an order for a sequestration has issued, the plaintiff's bill is to be taken *pro confesso*, and a decree to be made accordingly.

If the defendant be taken upon any of this process, he is to be committed to the Fleet, or other prison, till he puts in his appearance or answer, or performs whatever else this process is issued to enforce, and also clears his contempts by paying the costs which the plaintiff has incurred thereby.

The process against a body corporate is by *distringas*, to distrain their goods and chattels, rents, and profits. And if a peer be a defendant, the lord chancellor sends a *letter missive* to him to request his appearance, together with a copy of the bill; and if he neglect to appear, then he may be served with a *subpœna*; and if he continue still in contempt, a sequestration issues out immediately against his lands and goods, without any of the mesne process of attachments, &c. which are directed only against the person, and therefore cannot affect a lord of Parliament. The same process issues against a member of the House of Commons, except only that the lord chancellor sends him no letter missive.

The ordinary process before mentioned cannot be sued out till after service of the *subpœna*, for then the contempt begins; otherwise he is not presumed to have notice of the bill: and, therefore, by absconding to avoid the *subpœna*, a defendant might have eluded justice, till the 5 Geo. II. c. 25, which enacts, that where the defendant cannot be found to be served with process of *subpœna*, and absconds to avoid being served therewith, a day shall be appointed him to appear to the bill of the plaintiff, which is to be inserted in the *London Gazette*, read in the parish church where the defendant last lived, and fixed up at the Royal Exchange; and if the defendant do not appear upon that day, the bill shall be taken *pro confesso*.

But if the defendant appear regularly, and take a copy of the bill, he is next to *demur*, *plead*, or *answer*.

A *demurrer* in equity is nearly of the same nature as a demurrer in law; being an appeal to the judgment of the

court, whether the defendant shall be bound to answer the plaintiff's bill; as, for want of sufficient matter of equity therein contained: or where the plaintiff, upon his own showing, appears to have no right; or where the bill seeks the discovery of a thing which may cause a forfeiture of any kind, or may convict a man of any criminal misbehaviour. For any of these causes, a defendant may demur to the bill; and if, on demurrer, the defendant prevail, the plaintiff's bill shall be dismissed; if the demurrer be overruled, the defendant is ordered to answer.

A *plea* may be either to the *jurisdiction*, showing that the court has no cognizance of the cause; or to the *person*, showing some disability in the plaintiff, as by outlawry, excommunication, and the like; or it is in *bar*, showing some matter wherefore the plaintiff can demand no relief, as an Act of Parliament, a fine, a release, or a former decree. And the truth of this plea the defendant is bound to prove, if put upon it by the plaintiff. But as bills are often of a complicated nature, and contain various matters, a man may plead as to part, demur as to part, and answer to the residue. But no exceptions to formal *minutiæ* in the pleadings will be here allowed; for the parties are at liberty, on the discovery of any errors in form, to amend them.

An *answer* is the most usual defence that is made to a plaintiff's bill. It is given in upon oath, or the honour of a peer or peeress; but where there are amicable defendants, their answer is usually taken without oath, by consent of the plaintiff.

If the defendant live within twenty miles of London, he must be sworn before one of the masters; if farther off, there may be a commission to take his answer in the country, where the commissioners administer him the usual oath; and then the answer being sealed up, either one of the commissioners carries it up to the court; or it is sent by a messenger, who swears he received it from one of the commissioners, and that the same has not been opened or altered since he received it.

An answer must be signed by counsel, and must either deny or confess all the material parts of the bill; or it may confess and avoid, that is, justify or palliate the facts. If one of these be not done, the answer may be excepted to for insufficiency, and the defendant be compelled to put in a more sufficient answer. A defendant cannot pray any thing in this his answer, but to be dismissed the court; if he have any relief to pray against the plaintiff,

he must do it by an original bill of his own, which is called a *cross bill*.

After answer put in, the plaintiff, upon payment of costs, may amend his bill, either by adding new parties, or new matter, or both, upon the new lights given him by the defendant; and the defendant is obliged to answer afresh to such amended bill. But this must be before the plaintiff has replied to the defendant's answer, whereby the cause is at issue; for afterwards, if new matter arise, which did not exist before, he must set it forth by a *supplementary bill*.

There may be also a *bill of revivor*, when the suit is abated by the death of any of the parties, in order to set the proceedings again in motion, without which they remain at a stand.

And there is likewise a *bill of interpleader*; where a person, who owes a debt or rent to one of the parties in a suit, but, till the determination of it, he knows not to which, desires that they may interplead that he may be safe in the payment. In this last case, it is usual to order the money to be paid into court, for the benefit of such of the parties to whom upon hearing, the court shall decree it to be due. But this depends upon circumstances; and the plaintiff must also annex an *affidavit* to his bill, swearing that he does not collude with either of the parties.

If the plaintiff find sufficient matter confessed in the defendant's answer to ground a decree upon, he may proceed to the hearing of the cause upon bill and answer only. But in that case, he must take the defendant's answer to be true in every point; otherwise the course is, for the plaintiff to reply generally to the answer, averring his bill to be true, certain, and sufficient, and the defendant's answer to be directly the reverse; which he is ready to prove, as the court shall award. Upon which the defendant rejoins, averring the like on his side; which is joining issue upon the facts in dispute. To prove which facts is the next concern.

This is done by examination of witnesses, and taking their depositions in writing. And for that purpose interrogatories are framed, or questions in writing; which, and which only, are to be proposed to, and asked of, the witnesses in the cause. These interrogatories must be short and pertinent; not leading ones, (as "Did not you see this?" or, "Did not you hear that?") for if they be such, the depositions taken thereon will be suppressed, and not suffered to be read.

For the purpose of examining witnesses in or near London, there is an examiner's office appointed; but for such as live in the country, a commission to examine witnesses is usually granted to four commissioners, two named of each side, or any three or two of them, to take the depositions there. And if the witnesses reside beyond sea, a commission may be had to examine them there, upon their own oaths; and if foreigners, upon the oaths of skilful interpreters.

The commissioners are sworn to take the examinations truly, and without partiality, and not to divulge them till published in the Court of Chancery; and their clerks are also sworn to secrecy. The witnesses are compellable by process of *subpœna*, as in the courts of common law, to appear and submit to examination. And when their depositions are taken, they are transmitted to the court with the same care that the answer of a defendant is sent.

If witnesses to a disputable fact be old and infirm, it is very usual to file a bill to perpetuate the testimony of those witnesses, although no suit is depending; for it may be, a man's antagonist only waits for the death of some of them to begin his suit. This is most frequent when lands are devised by will away from the heir at law; and the devisee, in order to perpetuate the testimony of the witnesses to such will, exhibits a bill in chancery against the heir, and sets forth the will *verbatim* therein, suggesting that the heir is inclined to dispute its validity; and then, the defendant having answered, they proceed to issue, as in other cases, and examine the witnesses to the will; after which the cause is at an end, without proceeding to any decree, no relief being prayed by the bill: but the heir is entitled to his costs, even though he contest the will. This is what is usually meant by *proving* a will in chancery.

When all the witnesses are examined, then, and not before, the depositions may be published, by a rule to pass publication; after which they are open for the inspection of all the parties, and copies may be taken of them. The cause is then ripe to be set down for hearing; which may be done at the procurement of the plaintiff or defendant, before either the lord chancellor or the master of the rolls, according to the discretion of the clerk in court, regulated by the nature and importance of the suit, and the arrear of causes depending before each of them respectively. Either party may be subpœnaed to hear judgment on the day so fixed for the hearing; and then, if the plaintiff do not attend, his

bill is dismissed with costs; or, if the defendant make default, a decree will be made against him, which will be final, unless he pay the plaintiff's costs of attendance, and show good cause to the contrary, on a day appointed by the court. A plaintiff's bill may also at any time be dismissed for want of prosecution, which is in the nature of a nonsuit at law, if he suffer three terms to elapse without moving forward in the cause.

When there are cross causes, on a cross bill filed by the defendant against the plaintiff in the original cause, they are generally contrived to be brought on together, that the same hearing and the same decree may serve for both of them.

The method of hearing causes in court is usually this:—The parties on both sides appearing by their counsel, the plaintiff's bill is first opened, or briefly abridged, and the defendant's answer also, by the junior counsel on each side; after which the plaintiff's leading counsel states the case and the matters in issue, and the points of equity arising therefrom; and then such depositions as are called for by the plaintiff are read by one of the six clerks; and the plaintiff may also read such part of the defendant's answer as he thinks material or convenient; and, after this, the rest of the counsel for the plaintiff make their observations and arguments. Then the defendant's counsel go through the same process for him, except that they may not read any part of his answer; and the counsel for the plaintiff are heard in reply. When all are heard, the court pronounces the decree, adjusting every point in debate according to equity and good conscience; which decree being usually very long, the minutes of it are taken down, and read openly in court by the registrar.* The matter of costs to be given to either party is not here held to be a point of right, but merely discretionary, according to the circumstances of the case.

The chancellor's decree is either interlocutory or final. It very seldom happens that the first decree can be final, or conclude the cause; for if any matter of fact be strongly controverted, this court is so sensible of the deficiency of trial by written depositions, that it will not bind

* It is now the practice of the registrar to read the minutes of the decree openly in court, but any party to the suit may procure a copy of them, and, if there is any mistake, may move to have them amended. But, after a decree has been formally drawn up and entered, no errors, [illegible] can be rectified on motion, or by any other proceedings than rehearing [illegible] cause.

the parties thereby, but usually directs the matter to be tried by a jury; especially such important facts as the validity of a will, or whether A. is the heir at law to B., or the existence of a *modus decimandi*, or real and immemorial composition for tithes. But, as no jury can be summoned to attend this court, the fact is usually directed to be tried at the bar of the Court of King's Bench, or at the assizes.

So, likewise, if a question of mere law arise in the course of a cause, as whether, by the words of a will, an estate for life or in tail is created, or whether a future interest devised by a testator shall operate as a remainder or an executory devise; it is the practice of the court to refer it to the opinion of the judges of the Court of King's Bench or Common Pleas, upon a case stated for that purpose, wherein all the material facts are admitted, and the point of law is submitted to their decision; who thereupon hear it argued by counsel on both sides, and certify their opinion to the chancellor. And upon such certificate the decree is usually founded.

Another thing also retards the completion of decrees. Frequently, long accounts are to be settled, incumbrances and debts to be inquired into, and a hundred little facts to be cleared up, before a decree can do full and sufficient justice. These matters are always, by the decree on the first hearing, referred to a master in chancery to examine, which examinations too often last for years; and then he is to report the fact as it appears to him, to the court. This report may be excepted to, disproved, and overruled; or, otherwise, is confirmed and made absolute by order of the court.

When all issues are tried and settled, and all references to the master ended, the cause is again brought to hearing upon the matters of equity reserved, and a final decree is made; the performance of which is enforced (if necessary) by commitment of the person, or sequestration of the party's estate. And if by this decree either party think himself aggrieved, he may petition the chancellor for a re-hearing, whether it was heard before his lordship, or any of the judges sitting for him, or before the master of the rolls, or the vice-chancellor. For, whoever may have heard the cause, it is the chancellor's decree, and must be signed by him, before it is enrolled; which is done of course, unless a re-hearing be desired. Every petition for a re-hearing must be signed by two counsel, usually such as have been concerned in the cause, certifying that they

apprehend the cause is proper to be re-heard. And, upon the re-hearing, all the evidence taken in the cause, whether read before or not, is now admitted to be read; because it is the decree of the chancellor himself, who only now sits to hear reasons why it should not be enrolled and perfected; at which time all omissions of either evidence or argument may be supplied. But, after the decree is once signed and enrolled, it cannot be re-heard or rectified, but by bill of review, or by appeal to the House of Lords.

A *bill of review* may be had, upon apparent error in judgment appearing on the face of the decree; or by special leave of the court, upon oath made of the discovery of new matter or evidence, which could not possibly be had or used at the time when the decree passed. But no new evidence, or matter then in the knowledge of the parties, and which might have been used before, shall be a sufficient ground for a bill of review.

An *appeal to parliament*, that is, to the House of Lords, is the *dernier resort* of the subject who thinks himself aggrieved by an interlocutory order or final determination in this court; and it is effected by petition to the House of Peers, and not by writ of error, as upon judgment at common law. But no new evidence is admitted in the House of Lords, upon any account; this being a distinct jurisdiction, which differs very considerably from those instances wherein the same jurisdiction revises and corrects its own acts, as in re-hearings, and bills of review.

The same course of proceedings is to be observed in all cases heard by the vice-chancellor, who is merely appointed an assistant judge to the lord chancellor; for, by the 53 Geo. III. c. 24, the vice-chancellor is empowered to hear and determine all causes, matters, and things, which shall at any time be depending in the Courts of Chancery, either as a court of law or equity; and all his decrees, orders, and acts, are to be considered as acts of the High Court of Chancery, subject, however, to be reviewed, discharged, or altered by the lord chancellor, who must sign every such order or decree, before it can be enrolled or considered valid.

COURT OF KING'S BENCH.

This court derives its name from the king being formerly used to sit there in person, and is the supreme court of common law in England. It consists of a chief justice, and

four *puisne* justices, who are by their office the sovereign conservators of the peace, and the supreme coroners of the kingdom.

The jurisdiction of this court is very extensive. It keeps all inferior courts within the bounds of their authority, and may either remove their proceedings, to be determined here, or prohibit their progress below. It superintends all civil corporations in the kingdom. It commands magistrates and others to do what their duty requires, in every case where there is no other specific remedy. It protects the liberty of the subject, by speedy and summary interposition. It takes cognizance both of criminal and civil causes; the former in what is called the crown side, or crown office; the latter in the plea side of the court.

On the plea side, or civil branch, it hath an original jurisdiction and cognizance of all actions of trespass or other injury alleged to be committed *vi et armis;* of actions for forgery of deeds, maintenance, conspiracy, deceit, and actions on the case which allege any falsity or fraud; all of which savour of a criminal nature, although the action is brought for a civil remedy, and make the defendant liable in strictness to pay a fine to the king, as well as damages to the injured party.

The same doctrine is also now extended to all actions on the case whatsoever; but no action of debt or detinue, or other mere civil action, can by the *common law* be prosecuted by any subject in this court by original writ out of chancery; though an action of debt given by *statute* may be brought in the King's Bench as well as in the Common Pleas. And yet this court might always have held plea of any civil action, (other than actions real,) provided the defendant was an officer of the court, or in the custody of the marshal or prison-keeper of this court, for a breach of the peace, or any other offence. And in process of time, it begun by a fiction to hold plea of all personal actions whatsoever, and has continued to do so for ages; it being surmised that the defendant is arrested for a supposed trespass, which he never has in reality committed; and being thus in the custody of the marshal of this court, the plaintiff is at liberty to proceed against him for any other personal injury; which surmise of being in the marshal's custody, the defendant is not at liberty to dispute.

This court is likewise a court of appeal, into which may be removed by writ of error all determinations of the Court of Common Pleas, and of all inferior courts of record in England; and to which, till lately, a writ of error

lay also from the Court of King's Bench in Ireland. Yet even this so high and honourable court is not the *dernier resort* of the subject; for if he be not satisfied with any determination here, he may remove it by writ of error into the House of Lords, or the Court of Exchequer Chamber, as the case may happen, according to the nature of the suit, and the manner in which it has been prosecuted.

THE COURT OF COMMON PLEAS

Is one of the king's courts, held in Westminster Hall, or other certain place; it is not to follow the king and his court, but to be held at some place certain; nor shall be removed without warning by adjournment.

All actions belonging to this court come here, either by original, as on arrests and outlawries; or by privilege, or attachment for or against privileged persons; or out of inferior courts not of record. And all civil causes, real, personal, or mixed, are now here brought or determined; though originally this court could not hold plea in any action real or personal, but by writ out of chancery, returnable here; unless it was by bill for or against an officer or other privileged person of the court.

The Common Pleas is said to have been the only court for real causes concerning lands; and in personal and mixed actions it hath a concurrent jurisdiction with the King's Bench, but it hath no cognizance of pleas of the crown; and common pleas are all pleas that are not such. Its jurisdiction, like that of the other courts of Westminster, is general, and extends throughout England; and hither suits are removed out of other courts, by divers writs, as by *pone*, *recordari*, writ of false judgment, &c.

And this court, besides having jurisdiction for punishment of its officers and ministers, may grant prohibitions to keep temporal and ecclesiastical courts within due bounds.

The judges of this court are five in number, one chief and four *puisne* justices, created by the king's letters patent, who sit every day in the four terms to hear and determine all matters of law arising in civil causes, whether real, personal, or mixed and compounded of both. These it takes cognizance of, as well originally as upon removal from the inferior courts. But a writ of error, in the nature of an appeal, lies from this court into the Court of King's Bench.

THE COURT OF EXCHEQUER

Is inferior in rank, not only to the Court of King's Bench, but to the Common Pleas also. Its province was to order the revenues of the crown, and to recover the king's debts and duties. It is called the Exchequer, from the chequed cloth resembling a chess-board, which covers the table there; and on which, when certain of the king's accounts are made up, the sums are marked and scored in counters. It consists of two divisions; the receipt of the exchequer, which manages the royal revenue; and the court, or judicial part of it, which is again subdivided into a court of equity, and a court of common law.

The court of equity is held in the Exchequer-Chamber, before the lord treasurer and the chancellor of the exchequer, the chief baron, and three *puisne* ones. The primary and original business of this court is, to call the king's debtors to account, by bill filed by the attorney-general; and to recover any lands, tenements, and hereditaments, any goods, chattels, or other profits or benefits, belonging to the crown. But as, by a fiction, almost all sorts of civil actions are now allowed to be brought in the King's Bench, in like manner, by another fiction, all kinds of personal suits may be prosecuted in the court of Exchequer. For as all the officers and ministers of this court have, like those of other superior courts, the privilege of suing and being sued only in their own court, so also the king's debtors and farmers, and all accomptants of the exchequer, are privileged to sue and implead all manner of persons in the same court of equity that they themselves are called into. They have likewise the privilege to sue and implead one another, or any stranger, in the same kind of common-law actions (where the personality only is concerned) as are prosecuted in the court of Common Pleas.

This gives the origin of the common-law part of their jurisdiction, which was established merely for the benefit of the king's accomptants, and is exercised by the barons only of the exchequer, and not the treasurer or chancellor. The writ upon which all proceedings here are grounded, is called a *quo minus;* in which the plaintiff suggests, that he is the king's farmer or debtor, and that the defendant hath done him the injury or damage complained of, *quo minus sufficiens existit*, by which he is the less able to pay the king his debt of rent. But now, by the suggestion of

privilege, any person may be admitted to sue in the exchequer, as well as the king's accomptant. The surmise of being debtor to the king is therefore become matter of form, and mere words of course, and the court is open to all the nation equally. The same holds with regard to the equity side of the court; for there any person may file a bill against another, upon a bare suggestion that he is the king's accomptant; but whether he is or not, is never controverted. In this court, on the equity side, the clergy have long used to exhibit their bills for the non-payment of tithes, in which case the surmise of being the king's debtor is no fiction, they being bound to pay him the first fruits and annual tenths. But the chancery has of late years obtained a large share in this business.

An appeal from the equity side of this court lies immediately to the House of Peers; but, from the common-law side, in pursuance of the 31 Edw. III. c. 12, a writ of error must be first brought into the court of Exchequer-Chamber. And from the determination there had, there lies, in the last instance, a writ of error to the House of Lords.

THE COURT OF EXCHEQUER-CHAMBER

Has no original jurisdiction, but is merely a court of appeal, and was first created by the 31 Edw. III. c. 12, to determine causes upon writs of error from the common-law side of the Court of Exchequer. And to that end it consists of the Lord Chancellor and Lord Treasurer, and the justices of the King's Bench and Common Pleas. In imitation of which, a second court of Exchequer-Chamber, was created by the 27 Eliz. c. 8, consisting of the justices of the Common Pleas, and barons of the Exchequer, before whom writs of error may be brought to reverse judgments in certain suits originally begun in the Court of King's Bench. Into the Court of Exchequer-Chamber (which then consists of all the judges of the three superior courts, and now and then the Lord Chancellor also,) are sometimes adjourned from the other courts, such causes as the judges, upon argument, find to be of great weight and difficulty, before any judgment is given upon them in the court below.

From all the branches of the Court of Exchequer-Chamber, a writ of error lies to the house of peers.

THE COURTS OF ASSIZE AND NISI PRIUS

Are composed of two or more commissioners, who are, twice in every year, sent by the king's special commission all round the kingdom (except London and Middlesex, where the courts of *Nisi Prius* are holden in and after every term, before the chief or other judge of the several superior courts,* and except the four northern counties, where the assizes are holden only once a year,) to try, by a jury of the respective counties, the truth of such matters of fact as are then under dispute in the courts of Westminster Hall.

These commissioners must consist of one of the judges of the courts at Westminster, or a king's serjeant. They usually make their circuits in the respective vacations after Hilary and Trinity terms.

The judges upon their circuits sit by virtue of five several authorities:—1. The commission of the *peace*. 2. A commission of *oyer and terminer*. 3. A commission of general *gaol delivery*. 4. A commission of *assize*, directed to the judges and serjeants therein named, to take (together with their associates) assizes in the several counties; that is, to take the verdict of a peculiar species of jury called an assize, and summoned for the trial of *landed* disputes. The other authority is, 5. That of *nisi prius*, which is a consequence of the commission of *assize*, being annexed to the office of those justices by the statute of Westm. II. 13 Edw. I. c. 30; and it empowers them to try all questions of fact issuing out of the courts at Westminster, that are then ripe for trial by jury. These, by the course of the courts, are usually appointed to be tried at Westminster, in some Easter or Michaelmas term, by a jury returned from the county wherein the cause of action arises, but with this proviso, *nisi prius*, *unless before* the day prefixed the judges of assize come into the county in question. This they are sure to do in the vacations preceding each Easter and Michaelmas term, which saves much expense and trouble.

INSOLVENT DEBTORS' COURT.

The Act of Parliament by which this court was erected enacts, that it shall be lawful for his majesty to appoint a

* These courts of *Nisi Prius*, in London and Middlesex, are called the *Sittings after Term*.

chief and two other commissioners, being barristers at law, of ten years' standing at the least, to be his majesty's commissioners, to preside in a court to be called "The Court for Relief of Insolvent Debtors," which shall be a court of record for the purposes of this Act. And such court may appoint a chief clerk, a provisional assignee, a receiver, and so many officers of such courts as the lord chancellor, lord keeper, or lords commissioners for the custody of the great seal of the United Kingdom, together with the lord chief justices of the King's Bench and Common Pleas, and the chief baron of the Exchequer, shall from time to time deem necessary; and such court, or one commissioner thereof, shall sit twice a week for the dispatch of business throughout the year, in some convenient place or places in the cities of London or Westminster, or in the county of Middlesex, within the bills of mortality. Commissioners are also sent round the country at stated times, for the purpose of relieving debtors who are confined in the county gaols.

The County-Court is a court kept by the sheriff of every county, and divided into two sorts: one retaining the general name, as the county-court, held every month, before the sheriff or his deputy; the other called the *turn*, held twice in every year, *viz.* within a month after Easter and Michaelmas.

By the common law every sheriff ought to make his turn or circuit throughout all the hundreds in his county, in order to hold a court in every hundred for the redressing of common grievances, and preservation of the peace, &c.; and the turn is the king's leet through all the county; it being a court of record, of which the sheriff is judge. And before the courts at Westminster were erected, the county courts were the chief courts of the kingdom.

But the power of the county-court was much reduced by the statute of *magna charta*. It hath now the determination of certain trespasses and debts, under 40s.; but it holds no plea of any debt or damage to the value of 40s. or [illegible]; nor of trespass *vi et armis*, &c. But of debt and other actions personal above that sum, the sheriff may hold plea by force of writ of justices, which is in nature of a commission to him to do it.

No sheriff is to enter in the county-court any plaint in the absence of the plaintiff, nor above one plaint for one cause, on pain of 40s. And out of this court causes are removed by *recordari*, *pone*, &c. into the courts of King's

Bench and Common Pleas. We have before given the nature of the new enactment for the recovery of debts under £20, in the *Sheriff's Court*, which is merely another name for the Old County Court.

2. The Court-Leet is a court of record incident to an hundred, ordained for punishing offences against the crown. It is derived out of the sheriff's turn, and inquires of all offences under treason; but those which are to be punished with loss of life or member, are only inquirable and presentable there, and must be certified over to the justices of assize.

This court is called the *view of frank pledge:* for that the king is to be there certified, by the view of the steward, how many people are within every leet, and have an account of their good manners and government; and all persons above twelve years of age, which have remained there for a year and a day, may be sworn to be faithful to the king. Also every one, from the age of twelve to sixty years, that dwells within the leet, is obliged to do suit in this court, except peers, clergymen, &c.

In the court-leet, the steward is to judge, as the sheriff is in the turn: and this court is to be kept twice a year, once in a month after Easter and the other within a month after Michaelmas, at a certain place within the precinct; and the steward has power to elect officers, as constables, tithing-men, &c. as well as to punish offenders. The usual method of punishment in the leet is by fine and amercement: and a presentment here subjects the party to them: the former is assessed by the steward and the latter by the jury; for both of which the lord may have an action of debt, or take a distress.

This court inquires of and punishes misdemeanors, encroachments, nuisances, &c. purprestures in lands or woods; or houses set up or beat down, and other annoyances; bounds taken away; ways or waters turned or stopped; of thieves, and hues and cries not pursued; of bloodshed, escapes, persons outlawed, money-coiners, treasure found, assize of bread and ale, persons keeping ale-houses without licence, false weights and measures, unlawful games; offences relating to the game; of tanners selling insufficient leather, forestallers and engrossers of markets, &c.; of victuallers and labourers, unlawful fishing, idle persons, &c.; but most of these matters are now cognizable under particular statutes.

And the lord of the leet ought to have a pillory and a tumbrel, &c. to punish offenders; or, for want thereof, he

may be fined, or the liberty seized: and all towns within the leet are to have stocks in repair; and the town that hath none is to forfeit £5; but these are obsolete regulations.

3. The Court-Baron is that court which every lord of a manor has within his own precinct, and is an inseparable incident to a manor. It must be held by prescription, for it cannot be created at this day, and is to be kept on some part of the manor.

This court is of two natures:—1. By the common law, which is the baron's or freeholder's court, of which the freeholders, being suitors, are the judges. 2. By custom, which is called the customary court, and concerns the customary tenants and copyholders, whereof the lord or his steward is judge. The court-baron may be of this double nature, or one may be without the other. The freeholders' court hath jurisdiction for trying actions of debt, trespass, &c. under 40*s.* and may be held every three weeks, being something like the county-court. But on recovery in debt, they have not power to make execution, only to distrain the defendant's goods, and retain them till satisfaction be made. The other court-baron is for taking and passing of estates, surrenders, admittances, &c.; and is kept but once or twice in the year (usually with the court-leet), unless it be on purpose to grant an estate, and then it may be holden as often as required.

In this court the homage jury are to inquire that the lords do not lose their services, duties, or customs; but that the tenants make their suits of court, pay their rents, heriots, &c. and keep lands and tenements in repair, &c.: and every public trespass may be punished here by amercement, on presenting the same.

There is yet another court known to the law of England, which is the Court of Pie-Poudre, so called from the dusty feet of the suitors, and derived, according to some, from *pied paldreaux*, (a pedlar, in old French,) and therefore signifying the court of such petty chapmen as resort to fairs or markets. It is a court of record incident to every fair or market, of which the steward of him who owns or has the toll of the market is the judge: and its jurisdiction extends to administer justice for all commercial injuries done in that fair or market, and not in any preceding one. So that the injury must be done, complained of, heard, and determined, within the compass of one and the same day, unless the fair continue longer. This court has cognizance of all matters of contract that can possibly arise within the precinct of that fair or

market; and the plaintiff must make an oath that the cause of action arose there. From this court a writ of error lies, in the nature of an appeal, to the courts at Westminster; which are now also bound by the 18 Geo. I. c. 70, to issue writs of execution in aid of its process after judgment, where the person or effects of the defendant are not within the limits of this inferior jurisdiction.

ECCLESIASTICAL COURTS.

Of these courts there are seven, *viz.*

1. The ARCHDEACON'S COURT, which is held, in the deacon's absence, before a judge appointed by himself, and called his official; and its jurisdiction is sometimes in concurrence with, and sometimes in exclusion of the bishop's court of the diocese. From hence, however, by statute 24 Hen. VIII. c. 12, an appeal lies to that of the bishop.

2. The CONSISTORY COURT of every diocesan bishop is held in their several cathedrals, for the trial of all ecclesiastical causes arising within their respective dioceses. The bishop's chancellor, or his commissary, is the judge; and from his sentence an appeal lies to the archbishop of each province respectively.

3. The COURT OF ARCHES is a court of appeal belonging to the archbishop of Canterbury; whereof the judge is called the *dean of the arches.* His proper jurisdiction is only over the thirteen peculiar parishes belonging to the archbishop in London; but the office of dean of the arches having been for a long time united with that of the archbishop's principal official, he now, in right of the last-mentioned office, (as doth also the official principal of the archbishop of York,) receives and determines appeals from the sentences of all inferior ecclesiastical courts within the province. And from him an appeal lies to the king in chancery (that is, to a court of delegates appointed under the king's great seal,) as supreme head of the English church.

4. The COURT OF PECULIARS is a branch of, and annexed to the Court of Arches. It has a jurisdiction over all those parishes dispersed through the province of Canterbury in the midst of other dioceses, which are exempt from the ordinary's jurisdiction, and subject to the metropolitan only. All ecclesiastical causes within these peculiar or exempt jurisdictions are, originally, cognizable by this court; from which an appeal lies to the king in chancery.

5. The PREROGATIVE COURT is established for the trial of all testamentary causes, where the deceased hath left *bona notabilia* within two different dioceses; in which case the probate of wills belongs to the archbishop of the province. And all causes relating to the wills, administrations, or legacies of such persons, are originally cognizable therein, before a judge appointed by the archbishop, called the judge of the prerogative court; from whom an appeal lies to the king in chancery.

6. The COURT OF DELEGATES, the great court of appeal in all ecclesiastical causes, is, by 25 Hen. VIII. c. 19, appointed by the king's commission under the great seal. This commission is frequently filled with lords spiritual and temporal, and always with the judges and doctors of the civil laws. But in case the king himself be party, the appeal does not then lie to him in chancery, but to all the bishops, assembled in the upper house of convocation.

7. A COMMISSION OF REVIEW is a commission sometimes granted, in extraordinary cases, to revise the sentence of the Court of Delegates. But it is not a matter of right, which the subject may demand *ex debito justitiæ*, but merely a matter of favour.

MILITARY COURTS.

The only one of this kind is the COURT OF CHIVALRY, formerly held before the lord high constable and earl marshal of England, jointly. This court, by the 13 Rich. II. c. 2, hath cognizance of contracts and other matters touching deeds of arms and war, as well out of the realm as within. From its sentence, an appeal lies to the king in person. The authority seems now obsolete, and military offences relating to discipline are determined by courts martial, or commissions of inquiry held as occasion requires.

MARITIME COURTS.

THE COURT OF ADMIRALTY is held before the lord high admiral of England, or his deputy, who is called the judge of the court. It is no court of record, any more than the spiritual courts. From the sentence of the admiralty judge an appeal always lays, in ordinary cases, to the king in chancery. But it is expressly declared by statute, that, upon appeal made to the chancery, the sentence definitive of the delegates appointed upon commission shall be final.

In cases of prize-vessels taken in time of war, and co-

demned in any courts of admiralty, or vice-admiralty, as lawful prize or not, the appeal lies to certain commissioners of appeals, consisting chiefly of the privy council, and not to judges delegate.

COURTS OF A SPECIAL AND LOCAL JURISDICTION.

THE COURT OF COMMISSIONERS OF SEWERS, whose jurisdiction is to overlook the repairs of sea-banks and sea-walls, and the cleansing of rivers, public streams, ditches, and other conduits whereby any waters are carried off, is confined to such county or particular district as the commission shall expressly name. The commissioners are a court of record, and may fine and imprison for contempts; they may proceed by jury, or upon their own view, and may make order for the removal of any annoyances, or the safeguard or conservation of the sewers within their commission. They may also assess such rates, or scots, upon the owners of lands within their district, as they shall judge necessary; and if any person refuse to pay them, may levy the same by distress of his goods and chattels; or they may, by the 23 Hen. VIII. c. 5, sell his freehold lands, and, by the 7 Anne, c 10, his copyhold also.

The COURT OF THE MARSHALSEA and the PALACE COURT, at Westminster, though two distinct courts, are frequently confounded together. These courts have jurisdiction to hold plea of all manner of personal actions whatsoever which shall arise between any parties within twelve miles of Whitehall. A writ of error lies from thence to the Court of King's Bench. The proceedings in these courts are conducted by certain attorneys who are privileged to practise in them, as they are not open generally to the profession. They principally, if not altogether, reside in Clifford's Inn, Fetter-lane, and may be easily found on inquiry.

The LORD MAYOR'S COURT, for actions of debt and trespass, attachments, penal actions, appeals from inferior courts, and apprenticeships, is held by the recorder, at Guildhall. Certain attorneys only are allowed to practise in this court, which is held in the Exchange Chamber.

The SHERIFF'S COURT, for debt and trespass, case, account, covenant, attachment, and sequestration, is held by the sheriff or his deputy, at Guildhall. An action may be removed out of this, as well as out of the lord mayor's court, by *habeas corpus*, or *certiorari*, to a superior court at Westminster, if the debt exceed £5; but if under £10, it cannot be allowed until bail be put in.

COURTS OF REQUEST.

Courts of Request, in which small debts may be recovered at a trifling expense, and in an expeditious manner, are established in many places by various acts of parliament, which, although they differ in some particulars, are founded upon the same principles of economy, and the prevention of unnecessary delay. In some cases, their jurisdiction extends to sums under or not exceeding five pounds; in others, only to sums under and not exceeding forty shillings, although it is much to be regretted that they all have not jurisdiction in cases not exceeding ten pounds of personal debt, as a means of preventing much expensive litigation.

In the city of *London*, the jurisdiction extends to debts not exceeding *five pounds*. The court is held in Guildhall Yard, and is open every day. The cases are heard by a number of commissioners, who sit at each end of the court-room, and, generally speaking, attorneys are not heard on the merits of the case; but on questions affecting the jurisdiction of the court, they are allowed to appear. Persons who wish to recover debts in that court, must apply in the first instance for a summons,* which is made out and served by the officer of the court, on the party applying furnishing the name of the party to be summoned, his place of residence, and the amount of the debt. If the defendant neglect to appear, a second summons, or order, is issued; and, if he still neglect, the case is heard in his absence, and an order made for payment, either altogether and immediately, or by greater or less instalments, at greater or less times, as the circumstances may require. If the parties appear, of couse the case is heard in the first instance, and the decision is made accordingly.

The acts of parliament constituting these courts, contain clauses, enacting that when actions are brought in the superior courts for sums which might have been recovered

* As all the forms used in the courts of request are provided by the courts, and filled up and served by their own officers, and are merely summonses to appear, orders on neglect of appearance, &c., it is not necessary to give any *forms*.

in the courts of request, *the plaintiff shall not be entitled to any costs*, notwithstanding he may obtain a verdict against the defendant. It is therefore very necessary, before actions are brought for *small sums*, to ascertain whether there is any court of request in the neighbourhood, to which the defendant might be summoned, and the amount of which the court is empowered to take cognizance; as many mistakes of this nature have been inadvertently made by practitioners of much experience.

The London court is established under 39 & 40 Geo. III. c. 104, which amends and explains the statutes 3 Jas. c. 15, and 14 Geo. II. c. 10. By the amended act, "any person or persons, whether residing in the city, or *elsewhere*, and bodies politic or corporate, and fraternities or brotherhoods, who may have any debt, not exceeding the sum of five pounds, owing from any person or persons whatsoever, *residing* or inhabiting within the city of London, or the liberties thereof, or keeping any house, warehouse, shop, shed, stall, or stand, or seeking a livelihood, or trading, or dealing, within the same city or liberties, to cause such debtors, &c. to be warned or summoned to the court of requests; and the proceedings cannot be removed into any other court.* Attorneys, however, as *plaintiffs*, are not compellable to sue in this court, for debts under five pounds; but they are subject to process as *defendants*, and cannot plead their privilege. Debts due by persons under age may be recovered; and even servants, though *under* age, may recover wages by suing in this court; the *statute of limitations* may be pleaded as in other courts; and persons bringing actions to recover sums not exceeding five pounds, although they may obtain a verdict in a superior court, are *not entitled to costs*; and if the judge who tries such actions will certify that the debt ought to have been recovered in the court of requests, the *defendant* will be entitled to recover *double costs* of the plaintiff.†

* Except debts where any title of freehold, or lease for years of any lands or tenements shall come in question; or any debt by specialty, such as bonds, &c., which shall not be for the payment of a sum certain; or any other debt which shall arise by reason of any cause concerning testament or matrimony, or any thing concerning or properly belonging to the ecclesiastical court, although such debts do not exceed five pounds. Over these debts, courts of request generally have *no* jurisdiction; but in London, it has jurisdiction over a contract of retention of tithes by a tenant, although the value is *under* five pounds.—*Sandby* v. *Miller*, *East*, 194.

† Persons, however, may recover *rent* by distress, or bring actions for it, although not exceeding *five* pounds.

An occasional resort to the city, it seems, is not so "*seeking a livelihood*" within the city, as to subject a debtor to the jurisdiction of the court; so, a person residing out of the city, but having a seat, and occasionally underwriting a policy at Lloyd's; or a person plying as a porter, and resorting to a house of call, but *not* lodging in the city; or a clerk living in Middlesex, where his wife carries on business, although he may be employed in an office in the city, cannot be sued in the court; as the parties do not seek the *whole* of their livelihood there; but a merchant, with wharf, &c. in Southwark, and constantly occupying even half a counting-house in the city for the purposes of his trade, is within the jurisdiction of the court.

WESTMINSTER.

The 23 Geo. II. c. 27, establishes a "*Court of Requests for the city and liberty of Westminster, and that part of the duchy of Lancaster*,* which adjoineth thereto," under which creditors, whether residing in the limits of the jurisdiction or out of the limits, having debts (except as excepted in the city of London) owing, *not amounting* to the sum of *forty shillings*, by any person *inhabiting* or *seeking a livelihood* within the aforesaid limits, may apply to the clerks of the court, and sue out process against the persons indebted.

No suit for debts recoverable by this act are to be brought in any other court against any person residing in the jurisdiction; and if any such are brought, the defendant may plead this act in bar of proceedings, and will be entitled to full costs, whether the plaintiff be nonsuited, or discontinue his action, or have verdict pass against him; but this Act must be *pleaded*, or the court will not afterwards enter a suggestion on the record, or stay proceedings, and the plaintiff may sue for the debt in the courts of requests. Attorneys may be proceeded against in this court, which is held at St. Margaret's Hill, Westminster.

VINE-STREET.—There is a court of requests held here for the recovery of debts not amounting to forty shillings, under the preceding regulations.

* Comprising the parishes of St. Margaret, St. John the Evangelist, St. James, St. George Hanover-square, St. Anne, St. Martin in the Fields, St. Clement Danes, within and without the liberty of Westminster, and St. Paul Covent-garden.

COUNTY OF MIDDLESEX.

The *county court* of *Middlesex* is held in Kingsgate-street, Holborn; and by 23 Geo. II. c. 33, was authorised to entertain suits for the recovery of any sum *not* amounting to *forty* shillings, in a summary way; and no suit brought in this court for debts under 40*s*. can be removed, except in cases of *replevin;* but only such persons as were liable to be sued in the county-court, before the passing of the Act, can be summoned now, nor can the court take cognizance of any cause of action over which it had no jurisdiction before. Attorneys are *not* subject to the jurisdiction of *this* court. Defendants liable to be sued in this court are entitled to *double costs*, if sued in the superior courts, unless the judge certify in open court on the back of the record, that the title to the plaintiff's lands, or an act of bankruptcy came *principally* in question. This Act does not extend to the Tower, or Tower Hamlets, or the city and liberty of Westminster; and the jurisdiction of courts of conscience does not extend to contracts made on the high seas.

TOWER HAMLETS.

The court of requests for this district is held in Osborne-street, Whitechapel. It was established by 23 Geo. II. c. 30; amended by 19 Geo. III. c. 68; and recently by an act to extend the jurisdiction to *five pounds.*

It comprises the parishes of St. Mary Whitechapel, Christ Church, St. Leonard Shoreditch, St. John Hackney, St. Matthew Bethnal Green, St. Mary Stratford, Bow, Bromley, St. Leonard, St. Ann, St. Paul Shadwell, St. George, St. John Wapping, St. Botolph without Aldgate, commonly called the liberty of East Smithfield, Trinity, Minories, Mile End Old Town, Mile End New Town, Ratcliffe, Poplar, and Blackwall, the four last mentioned being in the parish of Stebunheath, otherwise Stepney, in the county of Middlesex; the precinct of the Tower Without, the precinct of St. Catherine, the precinct of Wellclose, the precinct of the Old Artillery Ground, and the liberty of Norton Falgate.

Any persons having debts not amounting to *five pounds*, owing to them by any persons *residing*, or inhabiting, or keeping any shop, shed, stall, or stand, or *seeking a livelihood*, or *trading*, or *dealing*, within the district, may summon such persons so indebted to them to this court, and

obtain judgment. Persons suing for such sums in any other court, to pay the defendant such ordinary costs as the defendant shall prove it hath truly cost him in the defence of the suit; but if the plaintiff obtain a verdict in a superior court for *less* than forty shillings, he shall have his costs, if the judge will certify there was a probable cause of action for forty shillings or more.

Attorneys are liable to process in this court, and the commissioners may take cognizance of debts under five pounds for *rent* of tenements let by parole demise; but no such rent can be recoverable, unless the person making such claim, or the person in whose right the claim is made, or under whom he claims, has been in *actual possession* of the said tenements; or in the *actual receipt of rent* for the said tenements during *twelve months* immediately preceding the time for which such rent shall be demanded; and no recovery of rent in this court can be evidence in support of the title of any person to lands, tenements, &c. Rent may, notwithstanding this Act, be recovered by distress, &c. and the Act does not extend to the precinct of the *Tower Within*, which enjoys a separate jurisdiction.

COUNTY OF SURREY.

BOROUGH OF SOUTHWARK, &c.—This court of requests was established by 22 Geo. II. c. 47, amended by 32 Geo. II. c. 6, s. 1, 46 Geo. III. c 87, s. 1, 6, and 4 Geo. IV. c. 123. The district comprises the *town* and *borough* of Southwark, containing the parishes of St. Olave, St. John, St. George, and St. Thomas; the parishes of St. Saviour, St. Mary at Newington, St. Mary Magdalen Bermondsey, Christ Church, St. Mary at Lambeth, St. Mary at Rotherhithe, and the several precincts and liberties of the same, with the parishes of Streatham, Clapham, Camberwell, and the manor of Hatcham, in the parish of St. Paul Deptford.

Persons, whether inhabiting the district or not, may sue any persons inhabiting or seeking a livelihood within the aforesaid limits, for any debt not exceeding five pounds. The proceedings may, however, be removed by *certiorari* into the superior courts; but if the plaintiff does not recover the sum of forty shillings in such superior court, and the defendant prove he was liable to be sued in the court of requests, the plaintiff shall pay the defendant such ordinary costs as it has truly cost him in the defence. Servants under age may recover wages, as if of full age; but this is not

to interfere with the jurisdiction of the magistrates, with respect to apprentices, servants in husbandry, &c. The statute of limitations may be pleaded. This Act does not give the power of determining title to lands, &c.; and the rights of the Palace Court and of the City of London are saved, &c.; but rents under forty shillings may be recovered in this court.

Western Division of the Hundred of Brixton.—This district includes Wandsworth, Putney, Battersea, and the immediate vicinity in the county of Surrey. The court is established by 46 Geo. III. c. 88. Sums not exceeding *five pounds* may be recovered from persons residing, &c. in the limits. Servants under age may recover wages. The statute of limitations may be pleaded. Attorneys are liable to process; and defendants, if sued elsewhere for sums recoverable in this court, are to have double costs.

Hundred of Wallington.—This comprises the parishes of Croydon, Mitcham, Carshalton, Beddington, Morden, Sutton, and Cheam. The court is established by 47 Geo. III. sess. 1, c. 4. Debts not exceeding five pounds are recoverable, by any persons, under the usual regulations; and defendants sued in other courts are entitled to *treble costs*. Attorneys are not exempt from process, and cannot practise in the court.

COUNTY OF KENT.

Hundreds of Blackheath, &c.—Comprising East Greenwich, St. Nicholas Deptford, Woolwich, Lewisham, Eltham, Chiselhurst, Charlton, Lee, Bromley, Beckenham, Bexley, Foot's Cray, St. Mary Cray, Orpington, Erith, and Plumstead. This court is also established by 47 Geo. III. as the hundred of Wallington, and debts may be recovered in the same manner.

The Town of Gravesend, and Hundreds of Toltingtrough, Dartford, Wilmington, and Axtane.—These courts are established by 47 Geo. III. sess. 2, c. 40, for the recovery of debts not exceeding five pounds. Defendants and witnesses, however, living in the hundreds of Dartford, Wilmington, and Axtane, are not to be summoned to Gravesend, in any case of debt accruing in those hundreds; and defendants, &c. in the hundred of Toltingtrough, are not to be summoned to the court held at Dartford. Defendants sued in other courts are entitled to costs, and proceedings cannot be removed into a superior court, except by the plaintiff, where the defendant has removed himself out of

the jurisdiction of these courts. The rights of the ancient court of Gravesend are reserved.

City of Rochester, and parishes of Stroud, Frinsbury, Cobham, Shorne, Higham Cliffe, Cooling, High Halston, Chalk, Hoo, Burham, Woodham, Halling, Cuxstone, Chatham, and Gillingham, and the ville of Sheerness, in the county of Kent. This court is established by 48 Geo. III. c. 51, and is held in the city of Rochester, for the recovery of debts not exceeding *five pounds;* and defendants sued in any other courts are entitled to *treble costs;* but money won at horse-races, cock-matches, wagers, or any kind of gaming, or play, cannot be recovered here.

City of Canterbury and liberties, &c.—Court established by 25 Geo. II. c. 45, for the recovery of debts *under* forty shillings. Any person may sue. Attorneys are subject to process, but not deprived of privilege. No debt *under two shillings and sixpence,* nor any debt for spirituous liquors, unless contracted at one time to the amount of twenty shillings. Debts recoverable here not to be sued for elsewhere, or defendant to be entitled to costs, &c.

Town of Dover, and parishes of Charlton, Buckland, River, Ewell, Lydden, Coldred, East Langdon, West Langdon, Ringwould, St. Margaret's at Cliff, Whitfield, otherwise Beansfield, Guston, Hougham, otherwise Huffham, Caple le Fern, and Alkham, with the liberty of Dover Castle. This court, held in Dover, is established by 24 Geo. III. sess. 1, c. 8, for the recovery of debts upwards of *two shillings,* and not amounting to *forty shillings.*

Town of Faversham, the Hundreds of Faversham and Boughton, and the parishes of Ospringe, Seasalter, and Whitstable. The court is established by 25 Geo. III. c 7. It is held at Faversham, for the recovery of debts exceeding *two shillings,* and not amounting to *forty shillings.* The rights of the court *portmote* are saved.

Town of Deal, and parishes of Ripple, Sutton, Northbourne, Great and Little Mongeham, Tilmanstone, Betshanger, Ham, and Sholden. Court established in Deal by 26 Geo. III. c. 18, for the recovery of debts above *two shillings* and not amounting to *forty shillings.* The rights of the court of record of Deal are saved.

Town of Folkstone, and parishes of Folkstone, Cheriton, Newington next Hythe, Standford, Portling, Lyminge, Elham, Paddlesworth, Acris, Swingfield, and Hawkinge. Court held at Folkstone. Debts above two and under forty shillings recoverable. Rights of the court of record reserved.

Town of Sandwich, the villes of Ramsgate and Sarr, the parishes of Minster, St. Lawrence, Stonar, Monkton, and St. Nicholas in the Isle of Thanet, Walmer, Ash next Sandwich, Eastry, Wingham, Staple, Goodnestone next Wingham, Chillenden, Nonnington, Woodnesborough, Eythorne, Word or Worth, Elmstone, Preston next Wingham, Ickham, Wickhambreux, Waldershare, Barfreston, Shepherdswell, Wyncenswould, Barham, Patrixbourn, Bishopsbourn, Breaksbourn, Littlebourn, Stodmarsh, and Stourmouth.—Court established by 47 Geo. III. sess. 1, c. 35. Held at Sandwich and Ramsgate, for the recovery of debts *not exceeding five pounds*. Actions not to be split for the purpose of proceeding in this court, except the plaintiff will take the judgment in full of all demands. Defendants sued in other courts to have *double costs*. The record of judgment may be removed to follow defendants who remove themselves and effects out of the jurisdiction.

Parishes of St. John the Baptist, St. Peter the Apostle, and Birchington, and the ville of Wood in the Isle of Thanet.—Court established by 47 Geo. III. sess. 2, c. 7, for the recovery of debts *not exceeding five pounds*. Actions may be split, as in the case of the last-mentioned court. *Double costs* are to be paid to defendants sued elsewhere; and defendants may be followed out of the limits by removing proceedings.

Hundreds of Codsheath, Somerden, Westerham and Edenbridge, Wrotham, Brenchley and Horsmonden, Washlingstone, the Lowey of Tonbridge, and the ville and liberty of Brasted.—Courts established by 48 Geo. III. c. 1, for the recovery of debts *not exceeding five pounds*.

HERTFORDSHIRE.

St. Alban's.—Court established by 25 Geo. II. c. 38, for the recovery of debts not amounting to *forty shillings*. This Act may be pleaded if defendants are sued in other courts; and if the plaintiff be nonsuited, or discontinue his action, or verdict pass against him, or judgment be given on demurrer, the defendant to have *full costs*. Rights of the earl of Salisbury reserved.

CITY OF BRISTOL.

The court of requests, for the recovery of debts *not* amounting to forty shillings, in this city, is established by 1 Wm. and Mary, sess. 1, c. 18. It enacts that every person *inhabiting* within the cities and counties of the cities of Bristol

and Gloucester, and the liberties thereof, may sue any other person also *inhabiting* for debts under forty shillings; and if defendants are sued for such debts in any other court, they are entitled to their costs.

Court for recovery of Debts exceeding forty shillings.— This court is established by 56 Geo. III. c. 76, and is entitled "The court of requests for the city and county of the city of Bristol, and the liberties thereof, and the parishes of Clifton, St. James, St. Paul and St. Philip, and Jacob, and the tithing of Stoke Bishop, in the parish of Westbury upon Trym, in the county of Gloucester, and the parish of Bedminster, in the county of Somerset." The Act appoints commissioners for the recovery of small debts above forty shillings, and not amounting to any sum for which an arrest on mesne process may take place by law. Any person may sue defendants residing, &c. in the limits. No privilege is allowed to attorneys. The court cannot entertain questions of right or title to lands, &c. Actions are not to be split, in order to proceed in the court. The court has a concurrent jurisdiction with the tolzey court; and all actions which might have been brought in the tolzey, or in the courts of Westminster, may still be brought there; and if any defendant sued in the court of requests, be desirous of having the case tried in the tolzey court, he may, within two days of being served with process in the court of requests, deposit five pounds with the prothonotary of the tolzey, to abide the event, and, on giving notice thereof in writing to the plaintiff, proceedings in the court of requests shall be stayed; and the plaintiff must prosecute in the tolzey, as if originally commenced there; and if the plaintiff does not proceed in the tolzey, within one calendar month from such deposit, the prothonotary will return the deposit, deducting a reasonable charge for his trouble. The plaintiff in such case may also receive back his deposit for the summons, &c. in the court of requests.

The statute of limitations may be pleaded. No attorney or advocate allowed, except in cases of total incapacity, &c. No proceedings to be quashed for want of form, and the rights of the court established by 1 William and Mary are reserved.

CAMBRIDGESHIRE.

Isle of Ely.—The court of requests for this district is established by 18 Geo. III. c. 36, for the recovery of debts not exceeding *forty shillings*, and the isle is divided into

four divisions; the first, containing the hundred of Ely, and the south part of the hundred of Witchford; the second, the hundred of Wisbech; the third, the liberties of Whittlesby and Thorney, in the hundred of Witchford; and the fourth, the rest of the *north* part of the hundred of Witchford. Any persons may sue in the limits: no attorney can plead privilege, nor can any action for such debts be maintained in any other court, and this Act may be pleaded. Gaming debts, wagers, &c. are not recoverable here.

CHESHIRE.

Township of Stockport and Brinnington, and hamlets of Edgley and Brinksway.—This court is established by 46 Geo. III. c. 114, for the recovery of debts *not exceeding five pounds.* Any person may sue, under the general regulations; and defendants sued elsewhere to have their costs. Defendants removing out of the jurisdiction, may be followed in person and goods, by removing the record to the superior courts.

Parish of Ashton-under-Lyne, Lancashire, and within the townships of Stayley, Hattersley, Matley, Newton, and Dukinfield, in the county of Chester.—The court is held here for the recovery of debts *not exceeding five pounds,* by 48 Geo. III. c. 118, under the same regulations as *Stockport, &c. ante;* but wagers, &c. not recoverable.

DERBYSHIRE.

Borough of Derby, and the Liberties.—Court established by 6 Geo. III. c. 20, for recovery of debts *not exceeding forty shillings.* Any person may sue. Attorneys are liable. Questions of title, &c. are not within the jurisdiction. No action to be brought in other courts for debts recoverable in this. No attorney to practise in the court. Gaming debts not recoverable.

DEVONSHIRE.

City of Exeter.—Court established by 13 Geo. III. c. 27, for recovery of debts *not exceeding forty shillings*, under the same regulation as Derby, *ante.*

GLOUCESTERSHIRE.

City of Gloucester. See *City of Bristol.*

Clifton and Stoke Bishop. See *City of Bristol.*

Hundreds of Cirencester, Crowthorne and Mointy, Brightwell, Barrow, Rapsgate, Bradley, Bisley, and Longtree.—

Court established by 32 Geo. III. c. 77, for recovery of debts not amounting to forty shillings. Any person may sue. Attorneys are not privileged. Questions of title, &c. not to be entertained. No actions to be brought in other courts, and proceedings not removable.

LANCASHIRE.

Liverpool.—The court of requests here is established by 25 Geo. II. c. 43, for the recovery of debts *under forty shillings.* All persons may sue debtors within the limits, and attorneys are liable to process, but not deprived of privilege. If any other plaintiffs declare for *less* than *forty* shillings, in any other court, the defendant may plead this Act in bar; and if for *more* than forty shillings, the defendant may plead in addition, that he did *not* owe more than forty shillings; and if the plaintiff fail, &c. the defendant shall be entitled to *double* costs, unless the judge certify there was probable cause of action for more than forty shillings; or that some claim or title, or act of bankruptcy, &c. came principally in question.

Manchester.—The court established by 48 Geo. III. c. 43, for the recovery of debts *not exceeding five pounds.* Any persons may sue. Attorneys are deprived of privilege, and cannot practise. The statute of limitations may be pleaded. Defendants may be followed out of the jurisdiction, by removing the proceedings into the superior courts. Gaming debts are not recoverable, and the rights of ancient courts are reserved.

Ashton-under-Line. See *Cheshire.*

Poulton, Kirkham, Lytham, Rispham, Preesall, and Stalmine.—Court established by 10 Geo. III. c. 21, for the recovery of debts *under forty shillings.* All persons may sue. The usual matters of title, &c. are exempt from the jurisdiction. Debts recoverable here are not to be sued for elsewhere, nor are the proceedings removable. Gaming debts are not recoverable.

LINCOLNSHIRE.

City and county of Lincoln, with its liberties and precincts, and within the bail of Lincoln—Court established by 24 Geo. II. c. 16, for the recovery of debts *not* amounting to *forty shillings.* Any persons may sue debtors in the limits; and no debts recoverable here can be sued for in any other court, under the penalty of double costs to the defendant. Questions of title, &c. are not within the jurisdiction of the court.

Hundred of Elloe, and parishes of Surfleet and Gosberton, in the hundred of Kerton.—Court established by 15 Geo. III. c. 64, and amended by 47 Geo. III. c. 37, for the recovery of debts *not exceeding* the value of *five pounds*. Any person may sue debtors within the limits. The proceedings are not removable, except by plaintiffs, where the defendants remove their goods, &c. out of the limits; and defendants sued elsewhere for debts recoverable here, are entitled to their costs; but it has been decided that attorneys are *not* restrained from bringing actions in the superior courts, although the debt may not exceed five pounds, because the privilege is not taken away in express words by this Act. This district includes Cowbitt, Crowland, Elloe, Fleet, Gedney, Gedney Hill, Gosberton, Holbeach, Holbeach Drove, Lutton, Moulton, Peak Hill, Pinchbeck, Porsand, Portland, Spalding, Surfleet, Sutton St. Edmund's, Sutton St. James, Sutton St. Mary, Sutton St. Nicholas, Tydd St. Mary's, Weston, Whapload, and Whapload Drove.

Parishes of Hagnaby, Welton in the Marsh, Steeping Magna, and Firsby.—Court established by 18 Geo. III. c. 34, for the recovery of debts *not* amounting to *forty shillings*. Any persons may sue, and no attorney can plead his privilege, or practice in the court. Gaming debts are not recoverable here. No debtor in the limits can be sued elsewhere, except in the court baron for holding pleas of debt in the soke of Bolingbroke belonging to her Majesty, in right of her duchy of Lancaster.

Sokes of Bolingbroke and Horncastle.—Court established by 47 Geo. III. sess. 2, c. 78, for the recovery of debts not exceeding five pounds. Any persons may sue. Attorneys are *not* privileged. Defendants sued elsewhere entitled to double costs, excepting they are sued in the court baron of the soke of Bolingbroke, as before, or the courts baron within the soke of Horncastle, the wapentakes of Candleshoe, Gartree, Louth Eske, Ludborough, Calseworth, Thill, Walshcroft, Yarborough, and Manley, and the parishes of Faldingworth, Buslingthope, Snarford, Friesthope, and Hanworth. Defendants may be followed out of the jurisdiction.

Borough and parish of Boston.—Court established by 47 Geo. III. sess. 2, c. 1, for the recovery of debts *not exceeding five pounds*. Any person may sue. Attorneys are not privileged. Defendants sued elsewhere are entitled to their costs, &c. as in the last paragraph. The district comprises Boston, Fishtoft, Frieston, Kirton, Leake, Leverton, Skirbeck, and Wrangle.

Soke of Horncastle &c.—Court established by 19 Geo. III. c. 43, for the recovery of debts *not amounting to forty shillings.* It comprises the soke of Horncastle, the wapentakes of Wraggo and Gartree, except the parish of Great Sturton, and the wapentakes of Louth Eske, Ludborough, and Calseworth. Any persons may sue. Attorneys are not privileged. Debtors within the limits are not to be sued elsewhere; but the rights of all courts baron are reserved.

Town and borough of Grimsby.—Court established by 46 Geo. III. c. 37, for the recovery of debts *not exceeding five pounds.* Any persons may sue. Attorneys are not privileged, &c. Defendants sued elsewhere entitled to costs.

NORFOLK.

Borough of King's Lynn.—Court established by 10 Geo. III. c, 20, for the recovery of debts *not amounting to forty shillings.* Any persons may sue within the limits, but gaming debts are not recoverable. Defendants sued elsewhere to have double costs. The district includes the parishes of Saint Margaret and South Lynn, or All Saints, within the borough and liberties.

Great Yarmouth.—Court established by 31 Geo. II. c. 24, for the recovery of debts *under forty shillings.* Any persons may sue. Attorneys are not privileged. Defendants sued elsewhere to have double costs, &c.

SHROPSHIRE.

Shrewsbury.—Court established by 23 Geo. III. c. 73, for the recovery of debts under forty shillings. Attorneys are not privileged. Gaming debts cannot be recovered, nor those of more than six years standing; nor debts (except of necessity) contracted on Sundays. Landlords may sue elsewhere for rent, &c. Defendants sued elsewhere entitled to costs, and the rights of the court of record for Shrewsbury are reserved.

Parishes of Brosely, Benthall, Maddeley, Barrow, Linley, Willey, Little Wenlock, Dawley, and Parnall.—Court established by 22 Geo. III. c. 37, for the recovery of debts under forty shillings. Any persons may sue. Gaming debts, &c. as before. Rights of the ancient court of record at Much Wenlock, and of courts baron, &c. reserved.

ISLE OF WIGHT.

Courts established by 46 Geo. III. c. 46, for the recovery of debts *not exceeding five pounds*. Any persons may sue. Attorneys are not privileged. Questions of title not in the jurisdiction. Actions not to be divided except plaintiff accept judgment in full discharge. Statute of limitations may be pleaded. Defendants sued elsewhere entitled to costs, but may be followed on removal of person or goods. Rent may be distrained for, though under *forty shillings*, &c.

SOMERSETSHIRE.*

City of Bath, &c.—The court here is established by 45 Geo. III. c. 47, for the recovery of debts *not exceeding ten pounds;* in all actions or causes of debt, except on questions of title, &c. any persons may sue; actions may be divided, &c. as in the last paragraph. The district includes Bath, Amrill, Bathforum, Calverton, Easton, Hampton, Walcot, and Wellow.

STAFFORDSHIRE.

Hales Owen, Rowley Regis, Harborne, West Bromwich, Tipton, and manor of Bradley, in Worcester, Salop, and Stafford.—Court established by 47 Geo. III. c. 341, for the recovery of debts *not exceeding five pounds* under the preceding regulations, except that the act does not take away the privilege of attorneys, and saving the jurisdiction of the lord of the manor of Hales Owen.

Township of Wolverhampton, Wednesfield, Brewood, Pattingham, Bushbury, and Penn.—Court held in Wolverhampton, by 48 Geo. III. c. 110, for the recovery of debts *not exceeding five pounds*. Any person may sue. Attorneys are not privileged, &c. The rest of the regulations are as usual.

Bilston, Willenhall, Wednesbury, and Darlaston.—Court established as at Wolverhampton for debts *not exceeding five pounds*, &c.

SUFFOLK.

Borough of Ipswich.—Court established by 47 Geo. III. c. 79, for the recovery of debts *not exceeding five pounds*. Any person may sue. Attorneys are not privileged.

* For Bristol, &c. and Bedminster, see p. 781.

Defendants sued elsewhere may recover costs, and may be followed on removal, &c. The rights of the Borough-court of Ipswich are reserved.

WARWICKSHIRE.

Town of Birmingham, and Hamlet of Deritend.—The court here is established by 25 George II. c. 34, amended by 47 George III. sess. 1, c. 14, for the recovery of debts *not exceeding five pounds.* Any persons may sue debtors within the limits. All common debts are within the jurisdiction, but questions of title, &c. are reserved. Attorneys are not exempt from process, but are not restrained from the privilege of suing elsewhere. Defendants sued elsewhere, (except by attorneys) to have costs; and the statute 25 George II. c. 34, may be pleaded in bar of actions in other courts for debts recoverable in this.*

WESTMORELAND.

Kirby in Kendal,—Court established by 4 George III. c. 41, for the recovery of debts *not amounting to forty shillings.* Any person may sue. Attorneys are liable to process, but not restrained from suing elsewhere. Debts not to be sued for in other courts; proceedings not removable, &c.

WILTSHIRE.

Hundreds of Bradford, Melksham, and Whorlsdown, including the towns of Bradford, Trowbridge, and Melksham, Westwood, Branham, and Hawkeridge. Court established here by 3 George III. c. 19, amended by 47 George III. sess. 2, c. 39, for the recovery of debts *not exceeding five pounds,* under the same regulations as in the last paragraph, &c.

Hundreds of Chippenham, Calne, Damesham North, and liberty of Corsham.—Court established by 5 George III. 2, c. 9, for recovery of debts under *forty shillings.* Any person may sue. Debts not to be sued for elsewhere, (except rent) and proceedings are not removable. Gaming debts, &c. not recoverable.

Hundreds of Westbury, Warminster, Heytesbury, and Damesham South.—Court established by 48 George III. c. 88,

* No person to whom any debt recoverable here by 47 George III. c. 14, is owing, can recover any costs if he sue elsewhere, wherever the plaintiff may reside, or wherever the cause of action may accrue.—*Lee* v. *Rogers,* 1 Chitty's Reports, 636, *in note.*

for recovering debts *not exceeding five pounds.* Any person may sue, and attorneys are *not* privileged. The other regulations are as usual.

WORCESTERSHIRE.

Parish of Old Swinford.—Court established by 17 George III. c. 19, for recovery of debts *under forty shillings.* All persons may sue. Attorneys are not privileged. Gaming debts are not recoverable, nor debts *not exceeding one shilling* for ale, spirits, &c., drank in one day. Jurisdiction of *court baron* is reserved.

Kidderminster.—Court established by 12 George III. c. 66, under the same regulation as in the preceding paragraph.

For *Hales Owen*, *Harborne, Rowley Regis,* and *Tipton,* see *Staffordshire.*

YORKSHIRE.

Doncaster.—Court established by 4 George III. c. 40, for recovery of debts *under forty shillings.* All persons may sue. Attorneys are liable to process here, but may bring actions elsewhere. Gaming debts are not recoverable.

Kingston-upon-Hull.— Court established here by 2 George III. c. 38, amended by 48 George III. c. 109, for recovery of debts *not exceeding five pounds.* Any person may sue. Attorneys are not liable to process, but not deprived of privilege. The usual exceptions exist and proceedings are not removable.

Halifax, Kighley, Bingley, Guiseley, Calverley, Batley, Birstall, Chirfield, Hartishead cum Clifton, Almondbury, Kirkheaton, Kirkburton, Huddersfield, and Tong.—Court established by 33 George III. c. 84, for the recovery of debts *under forty shillings.* All persons may sue debtors within the limits, but gaming debts, and engagements to pay for ale, spirits, &c., are not recoverable. Proceedings are not removable, and the rights of *courts baron*, &c., are reserved.

Sheffield and Ecclesall.—There are two courts established by 48 George III. c. 103, in these manors, for the recovery of debts *not exceeding five pounds.* All persons may sue. Defendants contracting debts in one jurisdiction, and removing into the other, are liable to proceedings in that jurisdiction in which they happen to be resident, when the suit is commenced. Attorneys are not privileged, nor are they restrained. The statute contains also the usual regulations, and the rights of the lord of the manor are reserved.

Beverley—Court established here by 21 George III. c. 38, amended by 46 George III. c. 135, for the recovery of debts *not exceeding five pounds.* Any person may sue. Attorneys are liable to process, but not deprived of privilege. Gaming debts are not recoverable. Questions of title cannot be entertained. Defendants sued elsewhere (except by attorneys) are entitled to *double costs.* Defendants may be followed, &c.

WALES.

Brecknockshire, Llangunider, Pendvryn, and Vaynor.—The court here is established by 49 George III. c. 141, for the recovery of debts *not exceeding five pounds.* Any persons may sue their debtors within the limits. Attorneys are not privileged. Questions of title, &c., are reserved. Persons may distrain for rent. Statute of limitations may be pleaded. The rights of *courts baron* and those of the marquis of Bute and the duke of Beaufort are reserved.

Glamorganshire.—Aberdare, Gellygare, Merthyr Tidfil, and Ystrafoduck Court established as at Llangunider, &c.

Monmouthshire, Bedwelly.—Court established as at Llangunider, &c.

NOTE.—Where the statutes establishing courts of request do not *expressly* enact that they may be pleaded in bar of actions when proposed to be tried elsewhere, the defendant must avail himself of their provisions, by moving the court *after verdict,* for leave to enter a suggestion upon the roll, that the debt recovered was *under forty shillings,* (or *not exceeding five, or ten pounds,* according to the jurisdiction,) and the suggestion being so entered, will not only deprive the plaintiff of his costs, but entitle the defendant to receive his costs from the plaintiff, either single, double, or treble, as the various statutes direct.

SCALE OF COSTS

To be allowed by direction of the Judges on Taxation in the Common Law Courts, in all actions commenced on or after the 15th of March, 1834.

DIRECTIONS FOR TAXING OFFICERS.

In all actions of assumpsit, debt, or covenant, where the sum recovered or paid into court, and accepted by the plaintiff, in satisfaction of his demand, or agreed to be paid on the settlement of the action, shall not exceed twenty pounds (without costs); the plaintiff's costs shall be taxed according to the reduced scale hereunto annexed.

Provided that in case of trial before a judge in one of the superior courts, or judge of assize, if the judge shall certify on the postea that the cause was proper to be tried before him, and not before a sheriff, or judge of an inferior court, the costs shall be taxed upon the usual scale.

At the head of every bill of costs, taken to the taxing officer to be taxed, it shall be stated whether the sum recovered, accepted, or agreed to be paid, exceeds the sum of twenty pounds, or not, in the following form:

Debt above twenty pounds.
Debt twenty pounds or under.

Three shillings and fourpence shall be allowed for drawing the judgment in all cases.

The officers of the Court of Exchequer are to allow no incipiturs of judgment upon paper, and are to mark the costs upon the postea.

Every brief sheet is to contain eight folios, at the least, which are to be paid for at the rate of six shillings and eightpence per sheet for drawing, and three shillings and fourpence for copying; such parts of the brief only as are really drawn, to be allowed as drawing, the rest to be allowed as copying.

The allowance to witnesses for travelling is to be only the sum actually paid, and that not exceeding one shilling per mile, except under special circumstances.

No fee to counsel is to be allowed on writs of trial, except trials before the judge of the Sheriff's Court of London, or of other Courts of Record where attorneys are not allowed to practise, and then one guinea only.

The fees to be allowed to counsels' clerks are not to exceed as under:

Upon a fee under ten guineas	£0	2	6
Ten guineas and under twenty guineas	0	5	0
Twenty guineas and upwards	0	10	0
Senior counsel's clerk on consultation	0	7	6
The other counsels' clerk on ditto, each	0	2	6
Attending as a witness at trials to prove documents	0	10	6

SCHEDULE I.

Commencement of Suit.

Letter before action, if sent	0	2	0
Instructions to sue	0	3	4
Writ	0	10	0
Copy and service	0	5	0
Bill and copy to enclose	0	2	0
Searching for appearance	0	3	4
Instructions for declaration	0	3	4
Drawing same as 1s. per fo.			
Engrossing at 4d.			
Notice thereof, when filed	0	5	0
Drawing particulars and copy	0	2	6
Rule to plead	0	1	0
Demanding plea	0	3	0
*Drawing issue of whatever length	0	3	4
Engrossing issue to deliver, at 4d. per folio			
Notice of trial	0	2	0

SCHEDULE II.

Where the Cause is tried before a Sheriff.

Summons for trial	0	1	0
Copy and service	0	3	0
Attending for order	0	3	4
Paid for order	0	1	0
Copy and service	0	3	0
Engrossing writ of trial, folio (14)	0	4	8
Parchment	0	3	0
Paid sealing	0	0	7
Attending thereon	0	3	4
Copy particulars to annex	0	2	0
Subpœna	0	5	0
Copy and service	0	3	0
Making minutes of evidence for the hearing	0	13	4
Attending to enter the cause	0	3	4
*Paid in part of the Sheriff's fee, on leaving the same	0	4	0
Attending court on trial	0	13	4
Paid remainder of fee for trial	1	4	6
Notice of taxing	0	3	0
Affidavit of increase	0	5	0
Paid filing affidavit	0	1	0
(Whether Town or Country.)			
Bill of costs and copies	0	4	0
Attending taxing	0	3	4
Paid taxing	0	2	6
(In K. B. and Exchequer.)			
Drawing judgment	0	3	4
Entering on the roll at 4d. per folio.			
Paid roll at 10d.			
Paid entries (as usual).			
Paid judgment fee and docket, as usual			
Attending thereon	0	3	4
Term fee, &c.	0	10	0
Letters in country causes—under 50 miles, 2s. Above 50 miles, 4s. Above 100 miles, 6s.			
Where Fi. Fa. and Warrant thereon. In town, 8s.—in country, 13s.			

SCHEDULE III.

Where cause is tried at Nisi Prius, and Verdict for 20l. or under.

Engrossing record, fo. (14)	0	4	8
Parchment	0	3	0
Paid sealing	0	0	7
Attending thereon	0	3	4
Copy particulars to annex	0	2	0
Venire	0	6	6
Paid return	0	2	0
Attending thereon	0	3	4
Distingras	0	7	6
Paid return			
Attending thereon	0	3	4
Subpœna	0	5	0
Copy and service	0	3	0
Instructions for brief	0	13	4
Brief and copy (no more)	2	0	0
Attending to enter cause	0	2	4
Paid entering (what has been paid)			
Paid counsel (as usual)			
Attending court on trial	1	1	0
Paid fees on trial (what has been paid)			
Postea	0	5	0
Notice of taxing	0	3	0
Affidavit of increase	0	5	0
Paid filing same	0	1	0
Bill of costs and copies	0	4	0
Attending taxing	0	3	4
Paid taxing (as usual)			
Drawing judgment	0	3	4
Entering on the roll at 4d.			
Paid roll at 10d.			
Paid judgment fee and docket.			
Attending thereon	0	3	4
Term fee	0	10	0
Letters in country causes—under 50 miles, 2s. Above 50 miles, 4s., Above 100 miles, 6s.			

* No more to be paid, if withdrawn.

LAW OF WILLS.

WILLS AND TESTAMENTS.

A WILL or testament is "the legal declaration of a man's intention of what he wills to be performed after his death;" and the person who makes a will or testament is called a *testator;* he who dies without a will is termed in law an *intestate.*

A *will* and *testament,* strictly speaking, are not words of the same meaning. A will is properly limited to land, and a testament only to personal estate; and the latter requires executors, who are named, to take care and see it performed.

A gift of lands or tenements by will is called a *devise;* and the person to whom they are given, the *devisee.*

Wills disposing of lands are regulated by several Acts of Parliament, and are a conveyance unknown to the old common law, which permitted a man only to dispose of his goods or personal property; but, in course of time, the words became applied indifferently to a disposition of lands or goods, which are frequently and continually distributed and devised at the same time by the will.

A bequest of goods and chattels is termed a *legacy;* and the person to whom they are bequeathed, a *legatee.*

There are two sorts of wills or testaments: first, written; and, secondly, verbal, or made by word of mouth. The latter is called a nuncupative will,

A *nuncupative* or *verbal* will, is where the testator, without any writing, declares his will before a sufficient number of witnesses: and this can extend only to personal estates; for no real estate can pass by the will, unless it be written and properly attested.

These kind of wills being liable to great impositions, were discountenanced by the 29 Chas. II. c. 3, sec. 19, (commonly called the Statute of Frauds,) but that section being abolished, by the 24 Will. IV. c. 26; and the 9th section of

that statute enacting, that "*no will shall be valid unless it shall be in writing*," it follows that nuncupative wills are abolished, except reduced to writing at the request, and in the presence of the testator, and except with respect to soldiers being in actual military service, or any mariners or seamen being at sea, who may dispose of their moveables, wages, and personal estate, as before. Sec. 11.

It is not material whether wills are written on paper or parchment, nor in what language, or in what hand or letters, so that they are fair and legible; neither is it material whether the same be written at large, or by notes, or characters usual or unusual, as XX for twenty, or when the figure I is used instead of the letter A, if it be in the testator's usual writing. So, also, if some words be omitted, or an improper sentence used; when the intent and meaning is apparent; as, where a man says, "I make my wife of this my last will and testament," leaving out the word *executrix*, yet the will is good. But if it be so done that it cannot be read; or, by reading, the mind of the testator cannot be known; then the will is void and of no force.

By a will made with good advice, the testator's estates may be given and disposed of so as not to leave the least room for dispute or litigation; yet if the will be not made with good advice, it may be attended with as bad consequences as if the testator had died intestate, and left his estate to the disposition of the law.

It has been presumed, that where a will has been made contrary to the interest and inclination of some of the testator's family or relations, it may, unknown to him, have been destroyed before his death, or concealed afterwards. To prevent such misfortunes, Lord Coke advises to make two parts of the will, and to leave one part thereof in the hands of a friend: either of these parts may be proved, and the testator's intention be secured; and if he should think proper to cancel it at any time before his death, this will not prevent or hinder him from so doing, any more than if there was only one party. For the cancelling of one part, done with an intention to destroy the will, is as the cancelling of both, and a good revocation of the whole will. Where the estate and effects are of any considerable value, this method of making the will in two parts, and leaving one part thereof with a friend, is commonly used.

All persons have full power to dispose of their property by will, unless under some special prohibition; and such prohibitions are generally upon three accounts: first, for want of

a sufficient discretion in the person making the will; secondly, for want of sufficient liberty and free will; and, thirdly, on account of criminal conduct.

1. In the first class of prohibitions are considered,

Infants, whose disqualification arises from infancy, or being under the age of twenty-one years; and in reckoning the age of an infant, the day of its birth must be excluded; for if an infant has attained to the last day of twenty-one years, the testament by him or her in the very last day, is as good and lawful as if the same day were already then expired.

An *idiot*, or natural fool, is one who, notwithstanding he may be of lawful age to make a will, yet has so little sense, as to be unable to number to twenty, or to tell his age, &c. Then he cannot make a will or testament, nor dispose either of his lands or goods.

The queen has ward of the lands of natural fools during their lives, taking the profits thereof, and providing them with necessaries; and, after the death of the idiot, he renders the estate to the heir at law. But a man is not an idiot, who has such a glimmering of reason, that he can tell his age, know his parents, or such-like common matters. And every person making a will is presumed to be of sound understanding, until the contrary be proved; so that the proof lies on the side of those who dispute the will, and they must prove such impediment to have existed previous to the date of the will; for if persons of sound mind make wills they shall not be revoked or affected by subsequent infirmity.

Persons grown childish, either through old age or any infirmity or distemper, are, during the continuance of such incapacity incapable of making a will.

Lunatics, during their madness or insanity, cannot make a will or testament, nor dispose of any thing thereby, on account of their utter incapacity of knowing what they are doing. The law requires, in the makers of wills, integrity, soundness, and sanity of mind; the health of the body only not being regarded.

Upon a proof of the testator's insanity, a will has been set aside after forty years' possession under it, and that to the prejudice of a purchaser. But if a mad person have intervals of calm reason, and, during the time of such intervals, possesses a sound and disposing memory and understanding, he may make his will, which will be good in law.

A *drunken man*, when so far intoxicated as to be deprived

of his reason and understanding, cannot make his will during his drunkenness.

Persons who are *born blind, deaf, and dumb,* are incapable of making a will; so likewise are those who are only deaf and dumb by nature.

A blind person might have made a nuncupative or verbal will by declaring his intentions before a sufficient number of witnesses; and he may now make a will in writing, provided such will be read to him before witnesses, and in their presence acknowledged by him for his last will.

2. Under the second head of persons incapable of making a will, are those who have not sufficient liberty and free will: *married women* come under this description.

Yet, by the license or consent of her husband, they may make a will, and dispose of goods and other personal effects; and it is therefore common for the husband, previous to his marriage, to covenant with the parents or friends of the intended wife to allow her the license or privilege of making a will, and to dispose of money or legacies to a certain value; and to pay what she shall appoint, not exceeding such value; and in that case, the husband is bound by his bond, agreement, or covenant, to allow the execution of it.

If a married woman's husband be banished beyond sea for life, she may make a will, as if she was unmarried, or as if the husband was dead; and it has been determind, that a married woman having any separate maintenance, may bequeath her savings by will, without any licence or consent of her husband. And if she survive him, she shall have it herself, and the same will not be liable to her husband's debts.

A will is rendered void, which is made in consequence of any *threats* whereby the party is induced, through fear to make such a will as he would not otherwise have wished to do. But if the testator confirm his will, when there is no excuse of fear, it is then good in law.

3. Criminal conduct occasions a third kind of disability.

Traitors, whose lands and tenements, from the commission of the offence, and goods and chattels from the time of conviction, are forfeited to the queen, have no longer any property in either; and are not only deprived of the privilege of making any will, from the time of being convicted and found guilty; but any will made before is void; in respect both of goods and land.

A *felon,* or one guilty of petit treason, lawfully convicted,

cannot make a will, or other disposition of goods or land, because the law has disposed thereof a ready, all his goods being forfeited to the queen. A pardon, however, restores him to his former estate and capacity of making a will.

Outlawed persons cannot dispose of their personal property, so long as the outlawry subsists; but their lands they may dispose of.

New Act for regulating Wills.

Before the passing of the 26th of Victoria I., entitled, "*An Act for the Amendment of the Laws with respect to Wills*," there was much obscurity, if not contradiction, as to what description of property might be disposed of by will; but the 3rd section of that statute enacts, "that it shall be lawful for every person to devise, bequeath, and dispose of, by his will, executed in manner hereinafter required, all real estate and all personal estate which he shall be entitled to either at law or in equity at the time of his death, and which, if not so devised, bequeathed, or disposed of, would devolve upon the heir at law or customary heir of him, or, if he became entitled by descent, of his ancestor, or upon his executor or administrator; and that the power hereby given shall extend to all real estate of the nature of customary freehold or tenant right, or customary or copyhold, notwithstanding that the testator may not have surrendered the same to the use of his will, or notwithstanding that being entitled as heir, devisee, or otherwise, to be admitted thereto, he shall not have been admitted thereto, or notwithstanding that the same, in consequence of the want of a custom to devise or surrender to the use of a will, or otherwise, could not at law have been disposed of by will, if this Act had not been made, or notwithstanding that the same, in consequence of there being a custom that a will or a surrender to a will should continue in force for a limited time only, or any other special custom, could not have been disposed of by will according to the power contained in this Act, if this Act had not been made; and also to estates *pur autre vie*, whether there shall or shall not be any special occupant thereof, and whether the same shall be freehold, customary freehold, tenant right, customary or copyhold, or of any other tenure, and whether the same shall be a corporeal or incorporeal hereditament; and also to all contingent or other future interests in any real or personal estate, whether the testator may or may not be ascertained as the person or one of the persons in whom the same respectively may become vested, and whether he may

be entitled thereto under the instrument by which the same respectively were created, or under any disposition thereof by deed or will; and also to all rights of entry for conditions broken, and other rights of entry; and also to such of the same estates, interests, and rights respectively, and other real and personal estate, as the testator may be entitled to at the time of his death, notwithstanding that he may become entitled to the same subsequently to the execution of his will."

The 4th section provides that where any real estate, of the nature of customary freehold or tenant right, or customary or copyhold, might by the custom of the manor have been surrendered, and was not surrendered by the testator to the use of his will, no person claiming to be entitled shall be admitted, except upon the payment of such stamp duties, fees, &c., as would have been due in respect of such surrender, or registering, &c., such surrender, if it had been made. And providing where the testator was entitled to be admitted, and might if he had been admitted, surrendered, &c., and shall not have been admitted, &c., no person shall be entitled to the real estate, except as before on the payment of such stamp duties, fines, &c., as would have been payable had the testator been duly admitted, &c., in *addition* to the stamp duties, fines, &c., payable on the admittance of the person claiming to be entitled.

Section 5 enacts, that when any such estates as aforesaid shall be disposed of by will, the lord of the manor, &c., or his deputy, &c., shall cause so much of the will by which such disposition is made to be entered on the court-rolls; and when any trusts are declared by the will, it shall not be necessary to enter the declaration of such trusts, but that such estate is subject to the trusts so declared in the will; and that the lord, &c., shall be entitled to the same fine, &c., when such estates are not now devisable, as he would have been from the heir in case of descent.

Section 6 enacts, that if no disposition by will shall be made of any estate *pur autre vie* of a freehold nature, the same shall be chargeable in the hands of the heir if it come to him by special occupancy, as assets by descent, as in the case of freehold land in fee simple; but where there shall be no special occupant, it shall go to the executor or administrator of the party that had the estate by grant:—and if the estate come to the executor or administrator either by special occupancy, or by virtue of this Act, it shall be assets dis-

tributable in the same manner as the personal estate of the testator.

Alterations in the previous Laws respecting Wills.

Section 7. "No will made by any person under the age of twenty-one years to be valid."

Section 8. "No will made by any married woman shall be valid, except such a will as might have been made by a married woman before the passing of this Act."

Section 9. No will shall be valid, unless it shall be in *writing*, and *signed* at the foot or the end thereof by the testator, or by some other person in his presence and by his direction; and such signature shall be made and acknowledged by the testator in the presence of two or more witnesses present at the same time; and such witnesses shall attest and shall subscribe the will in the presence of the testator, but *no form* of attestation shall be necessary.

Section 10. Appointments by will to be executed like other wills, and then to be valid, "notwithstanding it shall have been expressly required that a will made in exercise of such power should be executed with some additional or other form of execution or solemnity."

Section 11. Any soldier being in actual service, or any mariner or seaman being at sea, may dispose of his personal estate as he might have done before the making of this Act; and by Section 11, this Act does not affect the provisions of 11 Geo. IV. and 1 Will. IV. c. 20, with respect to the wills of petty officers and seamen of marines.

Section 13. "Every will executed in manner herein before required shall be valid without any other publication thereof."

Section 14. And "if any person who shall attest the execution of a will shall at the time of execution thereof, or at any time afterwards, be incompetent to be admitted a witness to prove the execution thereof, such will shall not on that account be invalid."

Section 15. But "if any person shall attest the execution of any will to whom or to whose wife or husband any beneficial devise, legacy, estate, interest, gift, or appointment, of or affecting any real or personal estate (other than except charges and directions for the payment of any debt or debts) shall be thereby given or made, such devise, legacy, &c., shall so far only as concerns such person attesting the execution

of such a will, or the wife or husband of such person, or any person claiming under such person, or wife or husband, be utterly null and void; and such person so attesting shall be admitted as a witness to prove the execution of such will, or to prove the validity or invalidity thereof, notwithstanding such devise, legacy, &c., mentioned in such will.

Section 16. "And in case by any will an estate shall be charged with any debt, and any creditor, or wife or husband of any creditor, shall attest the execution of such will, such creditor, &c., notwithstanding, shall be admitted a witness to prove the execution, or the validity or invalidity of the will."

Section 17. And "that no person shall on account of his being an executor, be incompetent as a witness to prove the will.

Section 18. "That every will made by a man or woman shall be revoked by his or her marriage, except a will made in exercise of a power of appointment when the estate thereby appointed would not in default of such appointment pass to his or her heir, customary heir, executor or administrator, or the person entitled as his or her next of kin, under the statute of distributions."

Section 19. No will shall be revoked by any presumption of an intention on the ground of an alteration in circumstances.

Section 20. And no will to be revoked but by another will or codicil, or by a writing executed like a will as before mentioned, or by destruction by the testator, or some one in his presence.

Section 21. And no alteration in a will shall have any effect, unless executed as a will; but the will with such alteration as part thereof shall be deemed to be duly executed, if the signature of the testator and the subscription of the witnesses be made on the margin or some other part of the will opposite or near to such alteration, or at the foot or end of or opposite to a memorandum referring to such alteration, and written at the end, or some other part of the will.

Section 22. No will that has been *revoked* shall be *revived*, without a re-execution or a codicil to revive it.

Section 23. No conveyance or other act made or done subsequently to the execution of a will of or relating to any estate therein comprised, except such will should be revoked as aforesaid, shall prevent the operation of the will with

respect to such interest in such estate as the testator shall have power to dispose of by will at the time of his death.

Section 24. And that every will shall be construed with reference to the estate comprised in it to take effect as if it had been executed immediately before the death of the testator, unless a contrary intention shall appear by the will.

Section 25. A residuary devise shall include estates comprised in lapsed and void devises.

Section 26. A general devise of the testator's lands shall include copyhold and leasehold as well as freehold lands.

Section 27. A general gift shall include estates over which the testator has a general power of appointment.

Section 28. And a devise without any words of limitation shall be construed to pass the fee.

Section 29. The words "*die without issue,*" or "*die without leaving issue,*" shall be construed to mean to die without issue living "*at the death:*" but this Act does not extend to cases where such words import if no issue described in a preceding gift shall be born, or if there shall be no issue live to attain the age, or otherwise answer the description required for obtaining a vested estate by a preceding gift to such issue.

Section 30. Where any real estate (other than or not being a presentation to a church) shall be devised to any trustee or executor, such devise shall be construed to pass the fee simple, or other the whole estate or interest which the testator had power to dispose of by will, unless a definite term of years, absolute or determinable, or an estate of freehold, shall be given expressly or by implication.

Section 31. Trustees under an unlimited devise, where the trust may endure beyond the life of a person beneficially entitled for life, to take the fee, and not an estate determinable when the purposes of the trust shall be satisfied

Section 32. Devises of estates tail shall not lapse in consequence of the death of the party in quasi entail, but shall take effect on the death of the testator, unless a contrary intention appear in the will.

Section 33. Gifts to children, or other children who leave issue living at the testator's death, shall not lapse; but the children of deceased issue to take their parent's share.

Section 34. This Act does not extend to wills made before 1838, nor to estates *pur autre vie* of persons who died before 1838: nor (section 35) does the Act extend to Scotland.

What may be disposed of by Will.

In order to prevent an imposition in respect to the disposal of lands to charitable uses, which might arise in a testator's last hours, and in some measure from just political principles, to restrain devises in mortmain, or the too great accumulation of lands in hands where it lies dead, and not subject to change possessors, it is provided by an Act (called the Statute of Mortmain) that no manors, lands, tenements, rents, advowsons, or other hereditaments, corporeal or incorporeal, whatsoever, nor any sum or sums of money, goods, chattels, stock in the public funds, securities for money, or any other personal estate whatsoever, to be laid out or disposed of in the purchase of any lands, tenements, or hereditaments, shall be given, limited, or appointed by will, to any person or persons, bodies politic or corporate, or otherwise, for any estate or interest whatsoever, or any ways charged or encumbered, by any person or persons whatsoever, in trust or for the benefit of any charitable use whatsoever; but such gifts shall be by deed indented, sealed, and delivered, in the presence of two or more credible witnesses, twelve calendar months at least before the death of such donor, and be enrolled in the High Court of Chancery within six calendar months after execution, and the same to take effect immediately after the execution, for the charitable use intended, and be without any power of revocation, reservation, or trust for the benefit of the donor. And all gifts and appointments whatsoever of any lands, tenements, or other hereditaments, or of any estate or interest therein, or of any charge or incumbrance affecting or to affect any lands, tenements, or hereditaments, or any personal estate, to be laid out in the purchase of any lands, tenements, or hereditaments, or any estate or interest therein, or of any charge or incumbrance affecting or to affect the same, or in trust for any charitable use whatsoever, made in ony other manner than is directed by this Act, shall be absolutely null and void. But the two universities, their colleges, and the scholars, upon the foundation of the colleges at Eton, Winchester, and Westminster, are excepted out of this Act: but with this proviso, that no college shall be at liberty to purchase more advowsons than are equal in number to one moiety of the fellows or students upon the respective foundations.

As real property, unless by the local custom of particular places, is devisable only by virtue of the statutes, it will be necessary, in order to discover how far the power of devising

real estates extends, to take a view of those statutes. The 32 Hen. VIII. enacts, that all persons having (or which thereafter shall have) any manors, lands, tenements, or hereditaments, or any estate of inheritance, holden by or in the nature of socage tenure (by which all lands except copyholds are now holden) shall have full and free liberty, power, and authority to give, dispose, will, and devise, as well by his last will and testament in writing, as otherwise, all his said manors, lands, tenements, and hereditaments, or any of them, at his free will and pleasure.

And by 34 and 35 Hen. VIII. cap 6, section 8, it is enacted, that the words "estate of inheritance," mentioned in the 32 Hen. VIII. shall be taken to mean estates in fee-simple only. It then proceeds to enact, that all persons having a sole estate or interest in fee-simple, or seized in fee-simple, in coparcenary or in common, of any manors, lands, tenements, rents, or other hereditaments, in possession, reversion, or remainder, or of rents, or of services incident to any reversion or remainder, have full liberty, power and authority to give dispose, will, or devise, to any person or persons whomsoever, by their last will and testament in writing, all their said manors, lands, tenements, rents, and hereditaments, or any of them, or any rents, commons, or other profits or commodities, out of the same, or any part thereof, at their own free will and pleasure.

Who are capable of taking by Will.

Every person not labouring under some legal disability, is capable of taking by will.

Coverture does not disable a woman to a devise; for though at law she cannot take without the consent of her husband, the Court of Chancery will compel him to give his consent.

A married woman is not disabled from being a devisee to her husband; for the reason in law, that a husband and wife are one person, does not hold in the case of a devise, which does not take effect till after his death.

A bastard *when born*, is capable of taking by devise,* and the lawful issue of a bastard is capable of inheriting, or taking by descent, or otherwise, such estate as the parent might die possessed of; but no person, except his wife or lawful issue, can claim any part of his estate, as kindred; for he can have no collateral kindred.

A devise to a bastard, *before birth*, is void.

* In devises to bastards, they should be very particularly described as the natural son or daughter of the *mother*, especially when too young to have acquired a name by reputation.

A testatrix, of the name of Mary Smith, had, by her will given legacies to several members of her family, upon trust for all and every child born in her life-time: one of these children was not in truth born, but was *en ventre sa mere;* and the question was, whether this child took under the description of a child born in her life-time? It had been decided, by many cases, that if the words had been, "living at my death," the child so *en ventre sa mere* would have taken. Courts of justice had extended the ordinary meaning of the words, on the principle, that such a child was clearly within the meaning and motive of the gift. The vice-chancellor, Sir John Leach, in deciding this cause, considered that the words, "born in my life-time," might be included in the above maxims, and therefore adjudged that the child was entitled to the advantages derived under the will of the testatrix.

Of the Execution of a Will.

It is enacted by the 29 Charles II. c. 3, (usually styled the statute of Frauds and Perjuries,) "that all devises and bequests of any lands or tenements, devisable either by common law, or by force of the Statute of Wills, or by that statute, or by force of the custom of Kent, or the custom of any borough, or any other particular borough shall be in writing, and signed by the party so devising the same, or by some other person in his presence, and by his express direction, and shall be attested and subscribed, in the presence of the devisor, by three or more credible witnesses, or else such devises or bequests shall be utterly void and of no effect."

In the construction of the above Act of Parliament, it has been adjudged, that the name of the person making his will, written with his own hand, as, "I, John Mills, do make this my last will and testament," is a sufficient signing, without any name at the bottom. But the safest way is to sign the name, not only at the bottom or end of the will, but at the bottom of each page or sheet of paper, if the will contain more than one; and the witnesses to the will, seeing the testator sign all the sheets, and put his seal (though that is not absolutely necessary in law) as well as his name to the last sheet, must write their names under the attestation in the last sheet only.

In the construction of wills, it is an invariable rule, that a devise must be most favourably expounded, to pursue if possible the will of the testator, who, for want of advice or learning, may have omitted the legal or proper phrases;

therefore, many times the law dispenses with the want of those words in wills, which are absolutely requisite in all other instruments.

All the words of a will must be considered together, to find out the intention; and the intention must take place, unless contrary to the rules of law.

If the name of the testator be not actually written by himself, or by his direction (in case of his not being able to write), no intention to sign is sufficient, though attended with the strong circumstance of his having made an effort to do it.

A written will of goods and chattels is not altered by the statute; and therefore it is not absolutely necessary to have any subscribing witness to it, witnesses subscribing their names being first introduced by the statute. And if a testament of chattels be written in the testator's own hand, though it have neither his name nor seal to it, nor witnesses present at its publication it is good in law, if sufficient proof can be had that it is his hand-writing. And though written in another man's hand, and never signed by the testator, yet if proved to be according to his instructions and approved by him, it hath been held a good testament of the personal estate.

The signing of the testator must be accompanied with a publication, that is, a declaration that the instrument is his will. But in the publication of a will it is not necessary that the witnesses should be made acquainted with its contents; and though the witnesses must all attest the execution of the testator's will in his presence, yet it is not necessary that it be done in the presence of each other.

Where the testator owns his hand before the witnesses who subscribe the will in the testator's presence, the will is good, though all the witnesses did not see the testator sign: and it is observable that the Statute of Frauds does not say that the testator shall sign his will in the presence of three witnesses; but requires these three things: first, that the will shall be in writing; secondly, that it be signed by the testator; and thirdly, that it should be subscribed by three witnesses; in the presence of the testator.

It is necessary to be careful who are made witnesses to the will. The safest method is to call in *three* indifferent persons, if there is any devise of lands in the will (otherwise, if the whole will respects only personal estate, *two* will be sufficient), who have no legacy given them by the

will or codicil which they are required to witness the execution of, and not being creditors, at least not considerable ones, to the person making the will; particularly if, as is often the case, the land is made subject by the will to the payment of debts. For, by 25 George II. c. 25, if any person who has a legacy left him by will is a witness to that will, he loses the legacy, it being made absolutely void.

Of Revoking or Annulling a Will, and of a Republication.

Though a man may have made his last will and testament, and declared it irrevocable in the strongest words, he is still at liberty to revoke it; and it may be revoked, either by some positive act of the testator, or by some act of a doubtful and equivalent import, furnishing only grounds to presume that the testator had such intention, which is an implied revocation.

By the Statute of Frauds it is enacted, that no devise in writing of lands, tenements, or hereditaments, or any clause thereof, shall be revocable, otherwise than by some other will or codicil in writing, or other writing declaring the same, or by burning, cancelling, tearing, or obliterating the same, by the testator himself, or in his presence, and by his directions and consent; but all devises and bequests of lands and tenements shall remain and continue in force until the same be burnt, cancelled, torn, or obliterated by the testator, or by his directions, in manner aforesaid, or unless the same be altered by some other will or codicil in writing, or other writing of the devisor, signed in the presence of three or four witnesses, declaring the same. And that no will in writing, concerning any goods, chattels, or personal estate, shall be repealed, nor shall any clause, devise, or bequest therein be altered or changed, by any words or will by word of mouth only; except the same be in the life-time of the testator committed to writing, and after the writing thereof, read to the testator, and allowed by him, and proved to be so done by three witnesses at least.

Of a revocation by some other will, &c. it has been determined, that such other will must in all respects be a good and valid will, or it will not amount to a revocation of the former will.

When a man having made a will, afterwards makes another inconsistent with it, without expressly revoking the former, this is a revocation in law; the fact of making a new

will furnishing a necessary inference, that the testator had mentally revoked the old one.

A codicil will be a revocation of the will, if inconsistent with it; but so far only as it is repugnant to the particular dispositions in the will, leaving it in all other respects undisturbed.

It has been determined, that, without an express revocation, if a man who has made his will afterwards marry, and have a child or children, this is a presumptive or implied revocation of his former will, which he made in a state of celibacy, as well to his real as his personal estate; and the above-mentioned statute does not extend to this case, but he shall be said to die intestate; the law supposing that he must mean to provide in the first place for his family, and distributing his estate for their benefit accordingly.

A *codicil* is a supplement to a will, or an addition made by the testator, annexed to, and to be taken as part of, a testament; being for its explanation or alteration, or to make some addition to, or subtraction from, the former dispositions of the testator.

An executor cannot regularly be appointed by codicil, yet may be substituted according to the will of the testator.

A man may make divers codicils, and the first is of equal force with the last, if not contradictory to each other.

LEGACIES.

A LEGACY is a bequest or gift of goods and chattels by will or testament: the person to whom it is given is styled the *legatee;* and if the gift be of the residue of an estate, after payment of debts and legacies, he is then styled a *residuary legatee.*

In case of a deficiency of assets, all the general legacies must abate proportionably, in order to pay the debts: but a specific legacy (of a piece of plate, a horse, or the like,) is not to abate at all, or allow any thing by way of abatement, unless there be not sufficient without it. Upon the same principle, if the legatees have been paid their legacies, they are afterwards bound to refund a rateable part,

in case debts come in more than sufficient to exhaust the residue after the legacies have been paid.

If the legatee die before the testator, the legacy is a lost or lapsed legacy, and shall sink into the residue. And if a contingent legacy be left to any one, as *when* he attains, or *if* he attain the age of twenty-one, and he die before that time, it is a lapsed legacy. But a legacy to one *to be paid* when he attains the age of twenty-one years, is a vested legacy; an interest which commences *in præsenti*, although it be *solvendum in futuro;* and if the legatee die before that age, his representatives shall receive it out of the testator's personal estate at the time that it would have become payable in case the legatee had lived.

Besides these formal legacies contained in a man's will and testament, there is also permitted another death-bed disposition of property, which is called a donation *causâ mortis*, a gift in prospect of death. This gift, if the donor die, needs not the assent of the executors; yet it shall not prevail against the creditors; and is accompanied with this implied trust, that if the donor live, the property thereof shall revert to himself, being only given in contemplation of death, *mortis causâ*.

As this donation may be avoided by creditors, so it may by the wife and children of a freeman, if it break in on their customary shares.

Pecuniary Legacies.—If a parent, or a person *in loco parentis*, give an immediate advancement or provision to a child before provided for by the will of the parent or of such person, such advancement or provision will amount to an ademption or satisfaction of the legacy given by the will. But the ademption or satisfaction being merely presumptive parole evidence (if clear and indisputable, and not founded on mere conjecture, or probability,) is competent to rebut the presumed satisfaction.

And if the legacy and advancement be not *ejusdem generis*, the latter will be no ademption of the former; as if the bequest were pecuniary, and the advancement by grant of a beneficial lease.

Vested Legacies.—When a legacy is given to A. *to be paid*, or *payable at*, or *when* he shall attain the age of twenty-one, or any other determined period, the legacy will be considered as vested in A. immediately; and, therefore, if A. should die before the day of payment, his assignee or personal representative will be entitled to the legacy.

Legacies upon condition are divided into conditions *precedent* and conditions *subsequent*. The former must happen or be performed before the legacy can vest; for the conditions being precedent, no interest vests prior to the performance of them: the latter, by non-performance, will defeat the legacy already vested.

Conditions which are impossible at the time of the creation, or which were good at the commencement, but become impracticable by a subsequent event, as by the act of God, or of the testator, or which are rupugnant to the nature and enjoyment of the bequest, or are contrary to law, are void, and the grantee is excused from the condition.

Legacies given to persons with a condition not to dispute the validity or bequests of wills and testaments, are not obligatory; so that if there exist any cause for disputing them, an endeavour to set them aside will be no forfeiture.

Restraints upon marriage being prejudicial to society, in preventing the propagation of the species, personal legacies given on condition not to marry generally, or not to marry without the consent of other persons, without restriction as to time, are discharged from such conditions, whether precedent or subsequent.

But conditions which restrain marriages to particular persons, or not with particular persons, or from marrying under twenty-one, or, if under twenty-one, within any other reasonable time, without the consent of parents, trustees, or guardians, are good conditions; for, in these instances, the liberty of marriage is not absolutely taken away, but only a qualification imposed, which may be expedient.

A condition by a husband, that his wife should be entitled to the bequest he has left her, only so long as she continued his widow, is good.

Payment and Appropriation of Legacies.—If the will appoint no time for the payment of legacies, they must in general be paid out of the testator's assets, within the expiration of a year after his death; and if no fund be assigned for the purpose, they must be paid in the currency of that country where the will was made.

If an executor pay a legacy given to an infant to the infant himself, or to another person, during his minority, he will be compelled to pay it over again; unless the infant legatee, on attaining his full age, ratify such payments or advancements.

Where the executor or trustee is not empowered to apply more than the interest of a legacy for the maintenance of the legatee, he will not be allowed any payments made for the benefit or advancement of such infant legatee, except for express necessaries; and not even for these, if he apply the principal or capital, or even a part of it. But if an executor do, without application, what a court of equity would have approved, he will not be forced to undo it, merely because it were done without application.

Legacies bequeathed to married women ought, in general, to be paid to their husbands; but the executors may withhold the payment of such legacies, until the husband consent to a suitable settlement or provision on the wife, unless the wife consent in Court, or, if abroad, before proper commissioners, to the payment of the legacy to the husband. But where a legacy is given to a married woman for her separate use for life, and, after her decease, according to her appointment by will, she has not such an absolute property in the legacy as to entitle her husband, by her consent, to the payment of it.

If a legacy be payable at twenty-one, and the legatee die before that period, his representative must wait for the legacy until the legatee, if living, would have attained twenty-one; but if the legacy be limited over to B. upon the event of the legatee's dying under twenty-one, and he die before that time, B. will, immediately on his death, be entitled to demand payment of the legacy.

But if interest be given to the legatee during his minority, his representative may claim the legacy immediately. If the legacy bear a less interest than the utmost use, the executor has a right to the use of the money, paying the modified interest.

Satisfaction of Debts and Portions by Legacies.—If a legacy bequeathed by a testator to his debtor be as much or more than the debt, the legacy will be considered as a satisfaction of the debt, unless expressly specified that the testator intended to give such legacy exclusive of the debt; and parole evidence will not be received to the contrary. But where there is no deficiency of assets, if the legacy be inferior in amount to the debt, the legacy will not be considered to be given in part payment or satisfaction of the debt.

When the debt and legacy are of equal amount, if there be a difference in the time of payment, so as the legacy may not be equally beneficial to the legatee as the debt, the legacy will not be a satisfaction of it.

So if a debtor bequeath to his creditor property of a different nature from that of which the debt consisted; or if the legacy be given on a contingency; or if the legatee is entitled to a sum of money absolutely, and the testator bequeaths to him an equal sum for life only; equity will not deem the testamentary gift a satisfaction of the debt.

So if the debt be contracted by a testator subsequent to the making of his will, a legacy of equal value will not amount to a satisfaction of the debt.

And if a running account subsist between the testator and the legatee, the legacy will not be a satisfaction, if the testator's estate appear indebted, on winding up the account.

Interest on Legacies.—If executors omit to pay legacies at the expiration of one year next after the death of the testator, the legatee will be entitled to interest from that period. And if the testator's intention appear favourable to the construction, a legacy will carry interest from his death. So interest on specific legacies is to be computed from the death of the testator.

With regard to the rate or quantum of interest to be allowed on legacies, when the amount has not been ascertained by the testator, no more than four per cent. will be allowed, whether the legacy were charged on real or personal estate.

EXECUTORS AND ADMINISTRATORS.

An executor is a person to whom a man commits by will the execution of his last will and testament. And all persons are capable of being executors that are capable of making wills, and many others besides; as, married women, and infants. Nay, even infants unborn may be made executors. But then, by the 38 George III. c. 87, sec. 6, such executorship must be granted to the infant's guardian, or such other person as the Spiritual Court shall think fit, until the infant has attained the full age of twenty-one years. In like manner, it may be granted during absence, or pending a suit, when the executor is out of the realm, (38 George III. c. 87, sec. 1,) or when a suit is commenced

in the Ecclesiastical Court, touching the validity of a will, or right of administration. This appointment of an executor is essential to the making of a will; and it may be performed either by express words, or such as strongly imply the same. But if the testator make an incomplete will, without naming any executor, or if he name incapable persons, or if the executors named, refuse to act, in any of these cases the ordinary may grant administration to some other person; and then the duty of the administrator, as also when he is constituted only during the minority of another, is very little different from that of an executor.

The power of an executor is founded on the special confidence and actual appointment of the deceased by his will; but an administrator is merely an officer of the ordinary, prescribed to him by Act of Parliament, in whom the deceased had reposed no trust at all, and whose power over the effects of the deceased arises from several statutes made for that purpose, and on whose death it results back to the ordinary to appoint another, who is then called an administrator *de bonis non*, that is, of the goods not administered by a former administrator. And in such case the administrator is the only legal representative of the deceased.

Executors are of two sorts; a rightful executor, and a wrongful executor, called in law an executor *de son tort*: the former is appointed by the will of the testator; the latter takes upon himself the office of executor by intrusion, without being constituted by the testator or the ordinary.

A wrongful executor is liable to all the trouble of an executor, without any of the profits or advantages. But merely doing acts of necessity, prudence, or humanity, as locking up the goods, or burying the deceased, or feeding his cattle, will not amount to such an intermeddling as will charge a person with the consequences of being an executor of his own wrong. Neither will the bare possession of goods make a man an executor of his own wrong, unless he undertake to do some acts which an executor only can lawfully do, as to release the debts of the testator, &c. Such a one cannot bring an action himself in right of the deceased, but is liable to answer to the executors, as also to the creditors and legatees of the deceased, to the amount of the testator's goods, which he shall have improperly administered; and will also be liable to an action, unless he deliver over the intestate's goods to the rightful administrator, before a suit be

commenced against him. In equity, however, he will be allowed all such payments as a rightful executor ought to have paid, unless perhaps on a deficiency of assets the rightful executor is prevented from satisfying his own debt.

An executor of his own wrong cannot retain the property of the intestate in discharge of his own debt, though of a superior degree. But if an executor of his own wrong possess himself of goods, and afterwards administration is granted him, he may, by virtue thereof, retain goods for his own debt.

If a creditor take an absolute bill of sale of the effects of his debtor, and agree to leave them in his possession for a limited time, and in the mean time the debtor die, whereupon the creditor sells the goods, he thereby becomes an executor *de son tort.* But a person who possesses himself of the effects of the deceased, under the authority and as agent for the rightful executor, cannot be charged as an executor *de son tort.* Neither if, *after* the executor has proved the will, and administered, a stranger takes any of the goods, and, claiming them as his own, uses and disposes of them accordingly, this will not make him, in construction of law, an executor *de son tort;* because there is a rightful executor, who may be charged with these goods so taken from his possession as assets, and to whom the stranger will be answerable in trespass for taking the goods.

In the appointment of an executor, though it is usual expressly to name him as such in the will, yet any words which imply the testator's intention that a person shall have the execution of his will, will be sufficient. And as such appointment may be of part or the whole of the testator's estate, if the executorship expire before the effects have been completely distributed, the ordinary may grant administration of the remainder.

The interest vested in the executor by the will of the deceased may be continued and kept alive by the will of the same executor: so that the executor of A.'s executor (if A.'s executor has proved the will) it is to all intents and purposes the executor and representative of A. himself. But the executor of A.'s administrator, or the administrator of A.'s executor, is not the representative of A.

In these cases, when the course of representation from executor to executor is interrupted by an intestacy, it becomes necessary that the ordinary should grant a new administration of the goods of the deceased, not adminis-

tered by the former executor or administrator, as the case may be; which new administrator is called an administrator *de bonis non;* and the cases in which this is necessary are,—1. When the executor of the deceased, having proved the will, dies intestate. 2. Where there are several executors, and the surviving executor, having proved the will, dies intestate. 3. Where an administrator dies before he has administered the whole personal estate of the deceased.

A person appointed executor by will, however, cannot be compelled to undertake the executorship against his own desire, unless he has, after the death of the testator, performed those acts which are proper for an executor, as by paying debts due from the testator, or receiving any debts due to him, or giving acquittances for the same, or other such-like acts; for then he is not only compellable to perform the office of an executor, but even if he should refuse so to do, his refusal will be void. Yet where a person is not compellable to accept the executorship, if he refuse to take upon himself the execution of the will, he shall lose any legacy which is bequeathed to him, unless it is probable, from nearness of kindred or other circumstances, the testator would nevertheless have given the legacy. However, where a legacy is left to a person as executor by the will, he may take time to consider whether he will accept the executorship or not, and in the mean time the ordinary may grant letters to any discreet person to collect in the effects of the deceased. And it has been held, that if an executor has accepted of the executorship, he will be entitled to a legacy given to him in that character, though he die before probate of the testator's will.

If there are many executors of a will, and only one of them proves the will, and takes upon him the executorship, it is sufficient for them all; and even after the death of their fellow executor, the right of executorship survives to them. But if all the executors refuse to prove the will, they cannot afterwards administer, or in any respect act as executors; but, before they are thus incapacitated, they must be twice cited. It is, however, to be remarked, that executors refusing to act must be *joined in all suits,* where the executors who have proved are made plaintiffs, because they are all privy to the will; though it is not necessary where they are defendants, because the plaintiff in any action against them is not bound in law to take notice of any but those who have proved the will.

If two executors be appointed by will, and one of them prove the will in the name of both, without the consent of the other, this will not bind him who refused the executorship, unless he administer. But if he once administer, he cannot afterwards renounce, for he has made his election. And if an executor take out administration, or be sworn, but afterwards refuse to administer, the ordinary cannot grant administration to any other during his life. He may, however, issue process to compel him to prove.

Neither can the ordinary set aside an executor for any disability at law, as on his becoming bankrupt: nor can he insist on his giving security; for the executor, being appointed by the testator, has been considered by him as a qualified person. But if an executor become subject to any natural disability, as to insanity, idiotism, or the like, the Spiritual Court will grant administration. And if it appear that the executor is wasting the goods of the testator, the Court of Chancery will, on the application of a creditor, appoint a receiver of the testator's effects, in order to protect them.

If a creditor constitute his debtor his executor, it is in law a release or discharge of the debt, whether the executor act or not, provided there be assets sufficient to pay the testator's debts; for though the discharge of the debt shall take place of all legacies, yet it will not be allowed against the testator's creditors. But it is otherwise in equity; for there the appointment of a debtor as executor is only a discharge of the action at law, and not of the debt.

If there be several joint debtors, and the creditor make one of them an executor, the debt is extinguished in law: nor is this consequence varied by the fact of the debtor's administering or not administering; the reason whereof is, that the other cannot bring an action without joining him who refuses, and they cannot sue one of themselves for a personal thing. And on this principle, if a woman, whose husband is indebted to the testator, be made executor, the husband's debt is thereby released,

If executors retain money in their hands longer than is necessary, they are chargeable with interest and costs, if any have been incurred. But one executor is not accountable for money received, or detriment occasioned by his co-executor, unless it has been by means of some joint act done by them.

Where a person dies wholly intestate, the ordinary will

depute an executorial power to the nearest and most lawful friends of the deceased, to administer his goods; and these are interpreted to be the next of blood to the intestate, not being under any legal disability. These administrators are put upon the same footing, with regard to suits and to accounting, as executors appointed by will; and the 21 Hen. VIII. c. 5, enlarges the power of the ecclesiastical judge a little more, permitting him to grant administration either to the widow or next of kin, or to both of them, at his discretion; and where two or more persons are in the same degree of kindred, the statute gives the ordinary the election to accept which he pleases.

The rules for ascertaining the next of blood, or, as it is usually called, the next of kin, are as follows:—

1. The ordinary is compellable to grant administration of the goods of the wife to the husband or his representative; and of the husband's effects to the widow, or next of kin, or to both, at his discretion. 2. Among the kindred, those are to be preferred who are the nearest in degree to the intestate; but of persons of equal degree, the ordinary may choose which he pleases. 3. This nearness of degree is reckoned according to the computation of the civilians, and not of the canonists; because in the civil computation the several degrees are numbered from the testator himself, and not from the common ancestor, according to the rule if the canonist. And, therefore, the children, or, on failure of children, the parents of the deceased, are entitled to administration; both which are indeed in the first degree, but the children are allowed the preference. Then follow the brothers, grandfathers, uncles, or nephews, and the females of each class respectively; and, lastly, cousins. 4. The half blood is entitled to the administration as well as the whole, for they are equally of the kindred of the intestate, and only excluded from the inheritance of the land for feudal reasons. Therefore, the brother of the half blood will exclude the uncle of the whole blood; and the ordinary may grant administration to the sister of the half, or the brother of the whole blood at his discretion. 5. If none of the kindred of the testator will take out administration, a creditor may do it. 6. At the end of twelve months from the death of the testator, if the executor to whom probate has been granted is residing out of the jurisdiction of the king's courts, a creditor may obtain letters of administration, for the purpose of having his demand satisfied out of the assets of the testator. 7. If the executor refuse,

or die intestate, administration may be granted to the residuary legatee, in exclusion of the next of kin. 8. And lastly, the ordinary may, in defect of all these, commit administration to such discreet persons as he approves of; or grant to any one letters to collect in the effects of the deceased, which neither makes him executor nor administrator; his business being to keep the goods in his safe custody, and do other acts for the benefit of the persons entitled to the property of the deceased

Where two or more administrators are appointed, one of them cannot, as in the case of executors, act alone, release the debts of the intestate, or otherwise dispose of his property, but they must all join in such release or disposition; for the authority delegated to them by the ordinary is a joint and not a several authority.

If a bastard die intestate, and without wife or children, or if any other person die without kindred, the king is entitled to the personal property as administrator. But, in the case of a bastard, it is now usual for the crown to grant administration to some relation of the bastard's father or mother, reserving a tenth part, or some other small portion, by way of preserving its rights.

If a married woman, as next of kin, has a right to administer, the administration ought not to be granted to the husband and wife jointly, but to the wife only. But if a wife, who, as a residuary legatee, has a right to take administration, refuse so to do, it may be granted to her husband, he being entitled to all she would have as residuary legatee.

By 22 and 23 Chas. II. c. 10, the administrator must enter into a bond, with two sureties, for duly administering the testator's effects; and if he neglect the requisitions of the bond he may be sued by any of the creditors or next of kin.

The first thing necessary to be done by an executor or administrator is to bury the deceased in a manner suitable to his rank in life, and the estate he has left behind him.

The next duty of an executor, or of an administrator, appointed during infancy, absence, litigation, or administration with the will annexed, is to prove the will of the deceased; which is done either in common form before the ordinary or his deputy, by the oath of such executor or administrator, or, in some of the dioceses in York, with the additional oath of one witness. But if the validity of the will be disputed, it then becomes necessary to prove and establish the will in the solemn way or form, that is

by witnesses, in the presence of such persons as would be interested, if the deceased had died intestate. Two witnesses must then be sworn and examined on interrogatories administered by the adverse party, who must be able at least to depose, that the testator declared the writing produced to be his last will and testament; unless where the will or codicil was written by the testator himself, and then the evidence of one witness, who can attest the fact of the identity, will suffice

There is a substantial difference of effect, however, between these two forms of proving wills: for, after an informal proof, the executor may be compelled again to prove the will in the form of law. The executor may, therefore, for greater safety, if he himself have an interest in the will, elect to have the will proved in the solemn form; and, in such case, he must cite the persons who would be interested under an intestacy, to be present at the proof thereof. If the will is proved only in the common form, it may at any time *within thirty years* be disputed: but if the solemn form is pursued, and no adverse proceedings are instituted within the time limited for appeals, the will is liable to no future controversy.

When the will is proved, the original must be deposited in the registry of the ordinary, and a copy thereof is made upon parchment, under the seal of the ordinary, and delivered to the executor or administrator, together with a certificate of its having been proved before him; and this is called a *probate*.

In defect of any will, the person entitled to be administrator must also at this period take out letters of administration, under the seal of the ordinary; whereby an executorial power to collect and to administer, that is, to dispose of the goods of the deceased, is vested in him. And, to prevent delay in the administration of the effects of the deceased, it is provided, that if any person administer the personal estate of another dying, without first proving the will of the deceased, or taking out letters of administration within six calendar months after the person's decease, he shall forfeit £50, to be sued for within six months after the time when the probate or administration ought to have been taken.

If all the goods of the deceased lie within the same diocese, a probate is to be made, or administration taken out, before the ordinary or bishop of the diocese where the deceased lived; but if the deceased had *bona notabilia*, that is, personal property of the value of £5, in several

dioceses or jurisdictions, the will must be proved, or administration taken out, in the prerogative or metropolitan court of the province in which the deceased died, by way of special prerogative; and every probate or administration not so granted, is declared void. If the *bona notabilia* be in different dioceses of different provinces, administration must be taken out in the archiepiscopal court of each province. But if they lie in one diocese of each province, administration may be granted by the bishop of each diocese of such *bona notabilia* as are within his jurisdiction.

By the ninety-third canon, goods in different dioceses, unless of the value of £5, shall not be accounted *bona notabilia*.

Bonds and other specialties are *bona notabilia* in the diocese where they happen to be at the time of the death of the testator or intestate. But simple contract debts and securities are such only in the diocese where the debtor then resided.

After obtaining the probate, the executor or administrator must immediately proceed to make an inventory of all the goods and chattels, whether in possession or action, of the deceased, which, if required, must be delivered to the ordinary upon oath, in the presence of two credible witnesses; and to which, if so delivered, no creditor is at liberty to object.

The executor by virtue of the will of the testator, or the administrator, by virtue of his administration, is to collect in all the goods and chattels of the deceased, whether real or personal, in possession as ready money, money in the funds, goods, cattle, stock on farm, or in trade. &c.: or in action, as debts owing to the deceased, securities for money, &c.

And such goods and chattels, when recovered by the executor or administrator, will be assets in their hands to make them chargeable to creditors, legatees, and the kindred of the deceased, as far as the value of such goods and effects extends, according to the following rules.

First, then, he must pay all necessary funeral charges, the expenses of proving the will, or granting letters of administration, and other necessary expenses incurred by the execution of his trust. In strictness, no funeral expenses are allowed against a creditor, except for the coffin, ringing the bell, parson, clerk, and bearers' fees; but not for the pall or ornaments. But if there are assets sufficient, the allowance is always regulated by the estate and degree of the deceased. 2. Debts due to the

king by record or specialty; for the king by his prerogative shall be preferred before any other. 3. Such debts as are by particular statutes to be preferred to all others; as, money due from overseers of the poor, for rates collected by them, and not paid; and money due to the post-office for letters. 4. Debts of record, as judgments (if properly docketed or entered according to the 4 and 5 William and Mary, c. 20,) debts due under a decree of a court of equity, and debts due on mortgage; all which debts carry interest to the time of payment, as do also debts on bonds. 5. Recognizances at the common law, statutes merchant and staple, and recognizances in the nature of statutes staple, pursuant to the 23 Henry VIII. c. 6. This must be understood of recognizances and statutes forfeited, where the recognizances are forfeited, or where they are for keeping the peace, good behaviour, &c. and the statutes are for performing covenants, &c. 6. Debts due on special contract, as for rent in arrear, and debts due on bonds or covenants under seal. But if such bond be proved to have been entered into without any good or valuable consideration, in equity it will be postponed to simple contract debts. 7. Debts on simple contract, as bills of exchange, promissory notes, or verbal promises, as well where the deceased has really promised, as where the law will imply that he has, as for goods bought, &c.; and among these simple contract debts, wages due to servants are first to be paid. 8. And lastly, legacies, &c.

In payment of these debts, the executor or administrator is bound to observe the rules of the law, which give a preference to them accordingly as they are differently secured; for otherwise, in case there should be a deficiency of assets, and he pay debts of a lower degree first, he will be obliged to answer those of a higher nature out of his own estate. But it is to be observed, that the payment of debts according to their priority, applies only to legal assets, that is, such effects of the testator as can be ecovered at common law.

Among debts of equal degree, executors and administrators are allowed to pay themselves their whole debts first. But they are not allowed to retain their own debts to the prejudice of those of a higher degree. Neither can an executor or administrator retain his own debt in preference to that of his co-executor or co-administrator of equal degree; but both shall be discharged in equal proportion.

If no suit be commenced against an executor or admi-

nistrator, he may pay any one creditor of equal degree his whole debt, though he should in consequence not have a sufficiency remaining to satisfy the rest; for, till a suit be commenced, he has no legal notice of the debt, except debts due on record, which he is bound to take notice of without suit commenced. And although executors and administrators are required to pay debts according to their priority, yet, if they have had no notice of debts due upon bond or other specialty, they may pay a simple contract debt before a debt of specialty.

And it has been held, that, even after notice, an executor or administrator may still give a preference to other creditors of the same degree, by confessing a judgment to them before plea. But after a bill is filed by a creditor for a discovery of assets and payment of his debt, the executor and administrator may pay another creditor of equal degree, and *à fortiori* of a higher degree, without confessing a judgment. Sir James Mansfield said, that through the medium of a court of equity, the creditors of a deceased insolvent may always be compelled to take an equal distribution of the assets; and it was only necessary for a friendly bill to be filed against the executor or administrator to account; after which the chancellor would enjoin any of his creditors from proceeding at law.

The payment of the debts according to their priority, applies only to legal assets: but when a testator leaves his real estate to trustees, or to executors who thus become trustees for the payment of his debts, these are called equitable assets, because a court of equity will order all the creditors to be paid *pari passu*, or an equal share out of this fund; and creditors whose demands are barred at law by the Statute of Limitations, may be let in. And, even where specialty creditors have received part of the debts out of the personal estate, a court of equity will restrain them from receiving any part of the equitable fund, till all the other creditors are paid an equal proportion of their debts.

The personal estate is said to be the natural fund for the payment of debts, yet it will be exonerated if the testator leave by his will sufficient real property for the payment of debts, provided it is the manifest intention that the personal estate shall be exonerated, and that the real estate shall be alone applied to that purpose.

If lands descend to the heir charged by the testator with his debts, they shall be liable to all his debts,

although they shall be considered as legal assets, and they shall be paid according to their priority. The equity of redemption of land mortgaged in fee, is equitable assets; for the creditors can have no relief from it but in a court of equity.

All specialty creditors, where the testator has bound himself and his heirs, have their election, whether they will resort to the heir, who has lands by descent, or to the executor, for payment of their debts; and although a court of equity will not interpose its authority, and compel the specialty creditors to apply to the heir, yet if they exhaust the personal fund, or leave insufficient for the discharge of the simple contract creditors, it will enable these to stand in the place of the specialty creditors, and to recover from the heir-at-law the amount of what they have drawn out of the personal fund. This is called *marshalling* the assets.

On the principle that the personal estate is to be primarily applied in discharge of the testator's debts, a mortgage made by the testator must be discharged out of the personal estate, provided there is sufficient to pay the rest of the creditors and legatees.—But though a mortgage is personal in its creation, yet if it has been contracted by another, and not by the testator or intestate himself, it is payable out of the real estate, for the personal estate has received no augmentation thereby.

It being the object of a court of equity, that every claimant upon the assets of a deceased person shall be satisfied as far as such assets can, by any arrangement consistent with the nature of the respective claims, be applied in satisfaction thereof; it has been settled, that where one complainant has more than one fund to resort to, and another claimant only one, the first claimant shall resort to that fund on which the second has no lien. And therefore, if a specialty creditor, whose debt is a lien on the real assets, have received part of his debt out of the personal assets, he cannot receive out of the equitable fund, till the simple contract creditors have been paid a portion of their debts, equal to what the personal estate has been exhausted in payment of the specialty creditors.

Where the debts of the deceased are all discharged, the *legacies* are next to be attended to, and are to be paid by the executor or administrator, so far as the effects which remain after payment of the debts will extend; but he may not give himself the preference in this case, as he may

in the case of debts, but shall have an equal portion with the the rest of the creditors.

Executors or administrators so entirely represent the personal estate of the testator or intestate, that they are liable to the payment of all the debts, covenants, &c. of the deceased, so far as the assets which have come to their hands will extend to pay. But it is a principle of law that an executor, where no default is in him, shall not be bound to pay more for his testator than his goods amount to.

Executors may release, or take a release, before probate, if they prove afterward. They may commence an action, but they cannot declare in the action before probate; for when they declare, they must produce in court the letters testamentary. They may release, pay, or receive debts., assent to legacies, demise land, and do many other acts, before probate.

Each executor has the entire control of the personal estate of the testator, may release or pay a debt, or transfer any part of the testator's property, without concurrence of the other executor. And it seems that the same rule holds with respect to administrators.

The goods of a testator, in possession of the executor, cannot be taken in execution of a judgment in action brought against the executor in his own right. But if an executrix use the goods of her testator as her own, and afterwards marry, and then the goods are treated as the goods of her husband, they may be taken in execution of the husband's debt.

Executors and administrators have a joint interest in the estate of the deceased. Hence, if there be two or more executors or administrators, and one or more of them die, the administration of the estate of the deceased belongs to the survivor or survivors; and it seems that an action may be brought by a surviving administrator, without procuring a new grant of letters of administration. They are entitled to the same remedies for the recovery of debts and duties due to the deceased, as he himself had while living. Yet neither they nor the representatives of the deceased can maintain an action against anoth for any personal injury done to the deceased; for it is a maxim in law, that personal actions die with the pers n But actions arising from a breach of promise, or the like, and which have abated by the testator's death, may be resumed by or against his executors or administrators; for actions of this kind are actions against the property of

the deceased, and descend to his representatives. So, by 32 Hen. VIII. they may sue for rent in arrear, and due to the deceased in his life-time, either in his own right or that of his wife; and may also distrain the lands, &c. charged with the payment of such rent, while they continue in the possession of the tenant, or any person claiming under him by purchase, gift, or descent, in the same manner as the testator might have done during his life. And by 11 Geo. II. the executor or administrator of a tenant for life, on whose death any lease of lands, &c. determined, shall, in an action on the case, recover from the under-tenant a proportion of the rent reserved, according to the time such tenant for life lived of the last year, or quarter of a year, or other time in which the said rent was growing due; and if he died on the day on which the same was payable, they shall recover the whole rent.

An acting executor having once received, and fully had under his control, assets of the testator, applicable to the payment of a debt, is responsible for the application thereof to that purpose: and such application having been disappointed by the misconduct of his co-executor, whom he employed to make the payment in question, he is liable for the consequences of such misconduct, as much as if the misapplication had been made by any other agent of a less accredited and inferior description.

By the 29 Chas. II. no action can be brought to charge any executor or administrator upon any special promise, to answer damages out of his own estate, unless the agreement upon which such action shall be brought, or some memorandum or note thereof, shall be in writing, and signed by the party to be charged therewith, or some other person thereunto by him lawfully authorised. And the promise, as well as a sufficient consideration to support it, must be expressed in such written memorandum or note.

While an executor is passive, he is chargeable only in respect of the assets; but if he promise to pay a debt of the testator at a future day, he thereby makes it his own debt, and it must be satisfied out of his own estate.

All desperate debts mentioned in the inventory shall be deemed assets in the executors' hands: but the executor may discharge himself by shewing a demand and refusal of them.

Where a defendant binds himself as administrator to abide an award touching matters in dispute between his intestate and another, and the arbitrator awards that the

defendant as administrator shall pay a certain sum, it operates as an admission of assets between these parties, and the defendant cannot plead *plene administravit* to an action of debt on the bond. But mere submission to arbitration is not of itself an admission of assets, unless the arbitrator order the administrator to pay the amount of the demand ascertained on the reference; and should the executor find the assets of the deceased very much encumbered with debts, so as to render it unsafe for him to administer them of his own discretion, he may apply to a court of equity to have them arranged according to their real priority.

If the property of the deceased be lost, or have become irrecoverable through the wilful negligence of the executor or administrator, such executor or administrator will be liable to make it good, unless it appear that he took all reasonable care to prevent such loss or defalcation.

Special bail is not required of executors or administrators, in any action brought against them for the debts of the deceased, except where they have wasted goods of the deceased. Nor shall costs be had against them.

FORMS OF WILLS AND CODICILS.

Form of a last Will and Testament, disposing of Goods, Money, and Personal Effects and not containing any Devise of Lands, requiring TWO *Witnesses.**

IN THE NAME OF GOD, AMEN.—I, William Jones, of in the parish of in the city of merchant, being of sound and disposing mind, memory, and understanding, but mindful of my mortality, do this day of in the year of our Lord make and publish this my last will and testament, in manner and form following; that is to say:—First, I desire to be decently and privately buried in the church-yard belonging to the parish in which I shall happen to die, without any funeral pomp, and with as little expense as may be: and I give and bequeath to the poor of such parish the sum of £10, to be distributed in such proportions and manner as my executrix. hereinafter named, shall think

* No will, by the new act, requires more than *two* witnesses; but more may be added at the pleasure of the testator, and in some cases it is desirable.

fit. Also I give and bequeath unto my eldest son, William Jones, the sum of £500. Also, I give and bequeath unto my second son, John Jones, the like sum of £500. Also, I give and bequeath unto my daughter, Mary Wilson, the like sum of £500. The said several and respective legacies to be paid unto them severally and respectively, immediately after the expiration of one year after my decease. Also, I give to my three grand-daughters, Sarah, Catharine, and Mary, children of my second daughter, Mary Wilson, the sum of £100 each. And I do desire that the said several sums of £100 shall, within the space of one month after my decease, be placed and invested in some or one of the public funds of this kingdom, at the discretion of my executrix hereinafter named: and that the said several sums of £100, or the funds or securities to be purchased therewith, shall be paid and transferred to my said grand-daughters respectively, when and as they shall severally and respectively attain their several and respective ages of twenty-one years, or day or days of marriage, which shall first happen; and that the interest accruing and arising therefrom in the mean time shall be applied towards their education and maintenance respectively, until they shall severally and respectively attain their said ages, or day or days of marriage aforesaid; and in case any or either of them, the said Sarah, Catharine, and Mary, shall happen to die before her or their attaining their said age of twenty-one years, and unmarried, then I give the share of her or them so dying unto the survivors or survivor of them; and if all my grand-daughters shall happen to die before the attaining the age of twenty-one years, and unmarried, then I give and bequeath the whole of the said several sums of £100, making in the whole the sum of £300, unto my said daughter Mary, if she shall be then living. And whereas Henry Baker, of Fleet Street, London, tailor, is indebted to me in the sum of £200 principal money, upon bond; now I do hereby give, forgive, and release unto the said Henry Baker, the sum of £100, part of the said sum of £200, and do hereby will and direct that my executrix, hereinafter named, do excuse and release the said sum of £100 to him. Also, I give to my wife, Ann Jones, the use of all my plate, household goods, and furniture whatsoever, which shall be in my dwelling-house at the time of my death, during her life-time; and, after her decease, I give the same to my son, William Jones, his executors, administrators, and assigns. And as to all the rest, residue, and

remainder of my estate, whatsoever and wheresoever, and of what nature, kind, and quality soever the same may be, and not hereinbefore given and disposed of, after payment of my debts, legacies, funeral expenses, and the expense of proving this my will, I do hereby give and bequeath the same, being all personal, unto my dear wife, the said Ann Jones, her executors, administrators, and assigns, to and for her and their own use and benefit absolutely; and I do hereby make, ordain, constitute, and appoint my said wife, Ann Jones, sole executrix of this my last will and testament, hereby revoking all former and other wills and testaments by me at any time heretofore made. In witness whereof I have to this my last will and testament set and subscribed my hand and seal, the day and year first above written.

Signed, sealed, published, and declared, by the said testator, William Jones, as and for his last will and testament, in the presence of us, who at his request, in his presence, and in the presence of each other, have hereunto subscribed our names as witnesses thereto. C. P. L. M.	WILLIAM JONES.	[*Place of the Seal*]

Form of a Will disposing of Lands only, and requiring TWO *or more Witnesses.*

THIS is the last will and testament of me, John Doe, of Fleet Street, in the city of London, gentleman, being of sound and disposing mind, memory, and understanding. First, I give, devise, and bequeath, unto Richard Roe, the younger, of Fleet Street, aforesaid, gentleman, all those my freehold messuages, lands, tenements, hereditaments, and premises, with the appurtenances, whereof I am seised in fee, situate, lying, and being at Cheshunt, in the county of Hertford, and now or late in the several tenures, or occupations of John Mills, &c., (*mentioning the names of the tenants of the premises*), or some or one of them, their or some or one of their under-tenants or assigns, to have and to hold all and every the said lands, tenements, and hereditaments, with the appurtenances, situate as aforesaid, to him the said Richard Roe, his heirs,

and assigns, for ever. Also I give, devise, and bequeath to my second son, William Doe, all that my freehold farm, lands, and premises, situate at Cheshunt aforesaid, and now in the possession of Richard Fenn, as tenant thereof to me, to hold the same farm, lands, and premises, unto my said son, William Doe, for and during the term of his natural life; and from and immediately after his decease, I give, devise, and bequeath the said farm, lands, and premises, to my grand-daughter, Mary Doe, her heirs and assigns, for ever. Also, I give and bequeath unto William Thomas, of Islington, in the county of Middlesex, esquire, all those my copyhold lands, messuages, tenements, and hereditaments, (and which I have surrendered to the use of my will,) situate, lying, and being at Enfield, in the county of Middlesex, and which now or lately were in the tenure or occupation of Edward Reeves, his undertenant or assigns, to have and to hold the said copyhold lands, messuages, and tenements to the said William Thomas, his heirs and assigns for ever, according to the custom of the manor of which the same are holden. And I do hereby also give, devise, and bequeath, unto my said son, William Doe, all those my four freehold messuages or dwelling-houses, situate in Fleet Street, London, aforesaid, being Nos. 106, 107, 108, and 109, and now being in the several tenures or occupation of, &c., *(mentioning the tenants' names,)* to have and to hold the same to my said son, William Doe, and to the heirs of his body lawfully begotten or to be begotten; and for default of such heirs, then to the right heirs of me the said John Doe, for ever. Also, I give, devise, and bequeath unto John Denn, of Cheapside, London, mercer, and Richard Fenn, of Fleet Street, London, aforesaid, linen-draper, all that my freehold estate, farm, lands, and premises, whereof I am seised in fee, situate, lying, and being at Hackney, in the county of Middlesex, and now in the tenure or occupation of Henry Roberts, as tenant to me of the same, under a lease of twenty-one years, from Lady-day, 1828, to have and to hold the same estate, farm, lands, and premises, with the appurtenances, unto the said John Denn and Richard Fenn, [their heirs and assigns for ever, as tenants in common, and not as joint tenants.]* And

* If it is intended to make the devisees *joint-tenants*, the words of the devise are to be exactly similar till the beginning of the brackets, and then, instead of the words inserted between them, say, "And the survivor of them, his heirs and assigns, for ever, as joint-tenants, and not as tenants in common"

as to all the rest, residue, and remainder of my real and copyhold estates whatsoever, and wheresoever the same may be situate, lying, and being, I do hereby give, devise, and bequeath the same to my said son, William Doe, to have and to hold the same to my said son, William Doe, his heirs and assigns, for ever. In witness whereof, I, the said John Doe, have to this my last will and testament set and subscribed my hand and seal, the 20th day of March, in the year of our Lord, 1834.

Signed, sealed, &c. (as in the attestation to No. 1.) JOHN DOE. [Place of the Seal]

[*This will must be executed in the presence of, and signed by all* THREE *witnesses.*]

If the testator acquire further property, which he is desirous should pass under the aforesaid will, it is necessary to make a written republication of it in the following form:—

WHEREAS since the making and publishing of the above last will and testament of me the said John Doe, I have purchased divers freehold lands, messuages, tenements, hereditaments, and premises, situate in the several counties of Hertford and Middlesex; now I do hereby republish my said last will and testament, and do hereby declare that it is my desire and intention that the said will and testament shall be good and valid, to all intents and purposes, as if the same had this day been originally made and published; any act, deed, matter, or thing whatsoever, by me heretofore done, committed, or omitted, to the contrary hereof in anywise notwithstanding. In witness whereof, I have hereunto set and subscribed my hand and seal, this first day of April, in the year of our Lord, 1834.

Signed and sealed by the said testator, John Doe, in the presence of us, who, at his request, in his presence, and in the presence of each other, have subscribed our names as witnesses to the above republication of his said last will and testament. } JOHN DOE. [Place of the Seal.]

[*And this republication must also be executed in the presence of, and signed by* THREE *witnesses, in the same manner as the original will.*]

A Will of Freehold, Copyhold, Leasehold, and Personal Estates, in which the Testator devises the same to Trustees, to secure an Annuity to his Wife, and also to provide for any Children that he might have by her; and in default of Issue, e devises the same, subject to the Annuity, &c. to the eldest Son of his Uncle, charged with the Payment of Monies.

In the name of God, Amen.—I, James Jones, of Charles Street, in the county of Middlesex, esquire, being of sound and disposing mind and memory, do make this my last will and testament, in manner following:—First, and principally, I commend my soul to God who gave it, and my body I commit to the earth, to be decently in terred at the discretion of my executors hereinafter named: and as to such worldly estate as God of his goodness hath bestowed upon me, I give and dispose thereof as follows, that is to say:—I give and devise unto and to the use of my dear wife, Mary Jones, Nathaniel Nokes, of and Oliver Orme, of , their heirs and assigns, all and every my freehold and copyhold estates, upon the trusts nevertheless hereinafter declared of and concerning the same; and I give, devise, and bequeath all my leasehold estates, as well for lives as for years, together with all my personal estate, of what nature or kind soever, unto the said Mary Jones, Nathaniel Nokes, and Oliver Orme, and their heirs, executors, administrators, and assigns respectively (according to the nature of the several estates), upon the trusts nevertheless, and to and for the several intents and purposes hereinafter expressed and declared of and concerning the same; that is to say, upon trust; by and out of the rents, issues, dividends, interest, and profits of all my said estates, to pay an annuity or yearly sum of five hundred pounds, clear of all taxes and deductions whatsoever, into the proper hands of my said dear wife, Mary Jones, during her natural life, for her own use and benefit, in addition to all other provisions made for her, upon or previous to our intermarriage; and also by the ways and means aforesaid, to pay one other annuity or yearly sum of pounds, clear of all taxes and other deductions, into the proper hands of my dear sister, Sarah Howel, the wife of Mr. Giles Howel, during her natural life, or to such person or persons as she shall from time to time, half yearly, and not otherwise, by any note or writing signed with her hand, direct or appoint to receive the same, and so as that the last-mentioned annuity shall not, nor shall any part thereof, be subject or liable

to the debts, engagements, management, or control of her husband, nor in either of their power to sell, anticipate, assign, or any way to dispose of or encumber the same; the said annuities respectively to be paid and payable by half-yearly payments, on the feast days of Saint Michael the Archangel, and the birth of our Lord Christ, in each year, by even and equal portions, the first payment of the same respectively to begin and be made on such of the said feast days as shall first happen after my decease; and upon further trust, that the said Nathaniel Nokes and Oliver Orme shall and may retain the sum of pounds each, for their trouble in performing the trusts of this my will: and upon this further trust, that they, the said Mary Jones, Nathaniel Nokes, and Oliver Orme, and the survivors and survivor of them, his or her heirs, executors, administrators, or assigns, do and shall, at the end of one year next after my decease, if there shall be any child or children of my body by the said Mary my wife then living, convey, assign, and transfer, in such manner as counsel shall advise, all the rest and residue of my freehold, copyhold, and leasehold estates, money in the funds, and all other my personal estate and effects, of what nature or kind soever the same may be, subject to, and charged with the payment of the said several annuities of five hundred pounds and pounds as aforesaid, or such of them as shall be then subsisting, unto my eldest or only child, his or her heirs, executors, administrators, and assigns, absolutely for ever; but in case there shall not be any child living at the end of one year next after my decease, shall and do convey, assign, and transfer, by such advice as aforesaid, all such rest and residue of my freehold, copyhold, and leasehold estates, money in the funds, and all other my said personal estates, subject and chargeable as hereinbefore mentioned, unto the eldest son then living of my uncle John Jones, of , esquire, his heirs, executors, administrators, and assigns, absolutely for ever; such eldest son nevertheless paying thereout, or to the good liking of my said trustees securing to be paid thereout, unto each and every of his younger brothers, the sum of three thousand pounds. And I do hereby constitute and appoint my said dear wife Mary Jones, the said Nathaniel Nokes, and Oliver Orme, executors of this my last will and testament, hereby revoking and annulling all former and other wills by me at any time heretofore made. And my will is, and I do hereby direct that my said executors and trustees shall each of them be answerable, for her and

his act and receipts only, and not the one of them for the other of them; and that they shall not be answerable for any loss or miscarriage by any security or securities that may happen in my estate; and also that they shall retain all their costs, charges, damages, and expenses, out of the estates and effects in them respectively vested in and by this my will, and the trusts therein contained. In witness whereof, &c.

JOHN JONES. [*Place of the Seal.*]

Signed, sealed, published, &c.

[*This also must be signed by* THREE *witnesses.*]

Will of Personal Property to Executors for Payment of Debts, with Powers for them to Compound, &c. requiring only TWO *Witnesses.*

THIS is the last will and testament of me, George Young, of , whereby I give and bequeath unto John and Edward Yates, both of , whom I appoint executors of this my will, all my ready money, and all such sums of money as shall be owing to me at the time of my decease, upon mortgages, by specialty, or simple contract, and all and singular other my personal estate and effects whatsoever and wheresoever, not hereinafter by me otherwise disposed of; upon trust, that they the said John and Edward Yates, or the survivor of them, or the executors, administrators, or assigns of such survivor, do and shall, with all convenient speed after my decease, call in and compel payment of all such part of my personal estate as shall consist of money owing upon securities or otherwise, and do and shall sell and dispose of and convert into money all such part or parts thereof as shall not consist of money: and my mind and will is, that it shall and may be lawful to and for the said John and Edward Yates, and the survivor of them, and the executors, administrators, and assigns of such survivor, to compromise or compound any sum or sums of money owing to me at the time of my decease, and to adjust, settle, and compromise all accounts which at the time of my decease shall be depending between me and any other person or persons whomsoever, and to give or allow such reasonable time or indulgences for the payment of the same respectively, and in the mean time to accept and take such securities or assurances for the payment thereof, as they or he shall in his or their discretion think fit: and my mind and will is,

that the said John and Edward Yates, and the survivor of them, and the executors, administrators, and assigns of such survivor, do and shall, by, with, and out of the money so raised by the ways and means last hereinbefore mentioned, satisfy and discharge all such debts as shall be due and owing by me to any person or persons whomsoever, by specialty, simple contract, or otherwise howsoever, at the time of my decease, and the interest of such of the said debts as shall carry interest, with full power to admit such evidence of any debt or debts as to him or them shall seem sufficient; and in the next place, do and shall satisfy and discharge the several legacies and bequests of this my will, or which I shall or may give or bequeath by any codicils thereto. [*Here insert the legacies and bequests.*] In witness, &c.

GEORGE YOUNG.

Signed, sealed, published, &c.

Introductory Part of a Will or other Testamentary Appointment by a Femme Covert.

THIS is the last will and testament, or writing in nature of the last will and testament, of Mary Baker, the wife of John Baker, of being or intended to be also an appointment made pursuant to and by force and virtue, and in exercise and execution of the power and authority to me for this purpose given in and by certain indentures of lease and release bearing date respectively the ninth and tenth days of May, 1833, the release being of four parts, and made or expressed to be made between John Baker the elder of the first part, the said John Baker my husband of the second part, of me the said Mary Baker of the said part, and James Hill of of the fourth part, and every other power and authority whatsoever, enabling me in this behalf, do by this writing, signed and sealed by me in the presence of three credible witnesses, whose names are, or are intended to be, written and indorsed hereon as witnesses to my having signed and sealed the same, and which writing I hereby declare to be and contain my last will and testament, limit, direct, and appoint, for all that and those my messuages and tenements, lands, and hereditaments, hereinafter particularly mentioned and described, that is to say, [*here describe the estates*] shall, from and immediately after my decease, go continue, and be unto James and Alexander Ingold, both of esquires, and their heirs, to and for the several uses, intents, and purposes, hereinafter

limited, expressed, and declared, concerning the same; that is to say, to the use and behoof, &c. [*as in a will.*]

[*This also requires* THREE *witnesses, if any freehold or real property is to pass.*]

Form of Codicil.

WHEREAS I, Richard Roe, of Fleet Street, London, linen-draper, have made and duly executed my last will and testament in writing, bearing date the tenth day of March, 1834: now I do hereby declare this present writing to be a codicil to my said will, and I do direct the same to be annexed thereto, and to be taken as a part thereof. And I do hereby give and bequeath to my son, Richard Roe, in my said will named, the further sum of two hundred pounds, in addition to what I have given him in my said will. And whereas I did in and by my said will give and bequeath unto John Fenn the sum of one hundred pounds, now I do hereby revoke the said legacy, and do give unto him, the said John Fenn, the sum of ten pounds, and no more. And I do hereby ratify and confirm my said will in all the other particulars thereof. In witness whereof I, the said Richard Roe, have to this codicil set my hand and seal, this sixteenth day of August, in the year of our Lord, 1833.

Signed, sealed, published, and declared by the said testator, Richard Roe, as and for a codicil to be annexed to his last will and testament, and to be taken as part thereof, in the presence of us.

[*Two witnesses.*]

RICHARD ROE. [*Place of the Seal.*]

[*If any real estate is disposed of by the codicil, it must, as well as a will be attested by* TWO *or more witnesses.*]

Form of a Codicil where several Legacies are revoked *

WHEREAS I, A. B. of Richmond, in the county of Surrey, gentleman, have, by my last will and testament, in writing

* In case of revocation of legacies, however, it is better to make a new will, if it be convenient; and although any bequests or dispositions of a will may be altered, new legacies given by codicil, and other executors appointed

duly executed, bearing date the sixth day of September, 1833, given and bequeathed, &c. Now I the said A. B. being desirous of altering my said will in respect to the said legacies, do therefore make this present writing, which I will and direct to be annexed as a codicil to my said will, and taken as part thereof; and I do hereby revoke the said legacies, by my said will given to and I do give to each of them the sum of and to the sum of only: and I give unto, &c. And I do ratify and comfirm my said will in every thing, except where the same is hereby revoked and altered as aforesaid. In witness whereof, &c.

A Codical to devise Lands purchased since the Testator's Will to the Uses of such' Will, to add a new Trustee thereof, and appoint Guardians to his Children.

WHEREAS I, G. M. of have by my last will and testament, bearing date the 17th day of April, 1834, given and devised all my lands and hereditaments situated in the county of Middlesex, unto C. P. and L. S. their heirs and assigns, upon such trusts, intents, and purposes, as are therein declared concerning the same. And whereas since the making and publishing this my said will, I have purchased certain other messuages, lands, and hereditaments, situated at or near Ealing, in the said county of Middlesex. Now I do hereby give and devise all the said lands and hereditaments situated in or near Ealing aforesaid, which I have purchased since the execution of my said will, as also the messuages, lands, and hereditaments, in my said will heretofore given and devised as aforesaid, unto and for the use of the said C. P. and L. S. and unto H. R. of their heirs and assigns, for ever; upon such trusts, nevertheless, and to and for such ends, intents, and purposes, as in and by my said will are expressed and declared of and concerning the said messuages, lands, and hereditaments, thereby devised unto the said C. P. and L. S. their heirs and assigns as before mentioned. And I do hereby also appoint the said H. R. one of the executors of my said will, together with the said C. P. and L. S. already thereby appointed executors thereof. And I do also appoint them the said C. P., L. S., and H. R. guardians of the persons and estates.

in the room of those named in the will, yet, where the alteration is of considerable importance, it is much better to make a new will, as less liable to suspicion or misrepresentation.

rights and interests of my said three children, James, George, and Mary, until they shall severally attain their respective ages of twenty-one years. And I do hereby declare this present writing to be by me intended to be a codicil to my said last will and testament; and the same shall be deemed and taken as part thereof, as fully and effectually, to all intents and purposes, as if the contents thereof had been actually inserted and comprised in the said will. In witness whereof, &c. G. M.

Signed, sealed, published, &c.

A Nuncupative Will.

THE following is the last will and testament of A. B. late of in the county of gentleman, declared to us, whose names are hereunto subscribed, desiring it might be considered and taken as his last will and testament, and requesting that we should bear witness thereto. [*Here insert the words of the testator.*]

C. F.
G. L.
T. P.

A Confirmation of a Will, indorsed on the back thereof.

WHEREAS, since the making of my last will and testament, as within mentioned, I have taken to myself a wife, by which the same or part thereof might be deemed void in law; now I do, notwithstanding the said circumstance, in all respects confirm and re-establish my aforesaid will, and desire the same may still be deemed and taken to be my last will and testament. As witness my hand and seal, this day of L. P.

Signed, sealed, published, &c.
J. C.
L. S.
M. G.

TABLE OF STAMP DUTIES ON LEGACIES, &c.

LEGACIES, or the successions to personal or moveable estates upon intestacy:—

1. *Where the testator, or intestate, died before or upon the 5th of April,* 1805, *and where payment shall be made on or after the* 31*st of August,* 1815:

Every legacy of £20 or upwards, of every clear residue devolving to two or more persons, where such residue or share amounts to £20 and upwards (after deducting debts, funeral expenses, legacies, and other charges first payable thereout)—			
For the benefit of a brother or sister, or any descendant of a brother or sister of the deceased, a per centum duty of	£2	10	0
For the benefit of a brother or sister of the father or mother of the deceased, or any of their descendants, a per centum duty of	4	0	0
For the benefit of a brother or sister of a grandfather or grandmother, or any of their descendants, a per centum duty of	5	0	0
For the benefit of any person in any other degree of collateral consanguinity, or any stranger in blood of the deceased, a per centum duty of .	8	0	0

2 *Where the testator, or intestate, shall have died after the 5th of April,* 1805, *and where payment shall be made after the* 31*st of August,* 1815:

Every legacy, residue, or share of residue, as in the preceding section, of £20 or upwards, which shall be given—			
For the benefit of a child of the deceased, or any descendant of a child of the deceased, or to or for the benefit of a father or mother, or any lineal ancestor of the deceased, a per centum duty of	£1	0	0
For the benefit of a brother or sister of the deceased, or any descendant of a brother or sister of the deceased, a per centum duty of . . .	3	0	0

For the benefit of a brother or sister of the father or mother of the deceased, or any descendant of a brother or sister of the father or mother of the deceased, a per centum duty of £5 0 0

For the benefit of a brother or sister of a grandfather or grandmother of the deceased, or any descendant of a brother or a sister of the grandfather or grandmother of the deceased, a per centum duty of 6 0

For the benefit of any person in any other degree of collateral consanguinity to the deceased than is above described, or any stranger in blood to the deceased, a per centum duty of 10 0 0

All gifts of annuities, or by way of annuity, or any other partial benefit or interest, out of any such estate or effects as aforesaid, shall be deemed legacies within the intent and meaning of this schedule.

Exemptions.—On legacies, &c. for the benefit of the husband or wife of the deceased, or any of the royal family; also, all legacies exempted from the duty by acts relating to corporate bodies.

LETTERS OF ADMINISTRATION to be granted in England; CONFIRMATION of any TESTAMENT dative, to be expeded in any Commissary Court in Scotland, where the deceased shall have died intestate before or upon the 10th day of October, 1808, and subsequent to the 10th day of October, 1804; or INVENTORY to be exhibited and recorded in any Commissary Court in Scotland, of the estate and effects of any person deceased, who shall have died intestate after the 10th day of October, 1808; where the estate and effects, exclusive of what the deceased shall have been possessed of or entitled to as a trustee, and not beneficially, shall be above the value of £20, and under the value of £50 . . . . £0 10 0

£50	and under	£100	. £1 0	£2,000	and under	£3,000	. . £75 0
100	and under	200	. 3 0	3,000	and under	4,000	. . 90 0
200	and under	300	. 8 0	4,000	and under	5,000	. . 100 0
300	and under	450	. 11 0	5,000	and under	6,000	. . 150 0
450	and under	600	. 15 0	6,000	and under	7,000	. . 180 0
600	and under	800	. 22 0	7,000	and under	8,000	. . 210 0
800	and under	1,000	. 30 0	8,000	and under	9,000	. . 240 0
1,000	and under	1,500	. 45 0	9,000	and under	10,000	. . 270 0
1,500	and under	2,000	. 60 0	10,000	and under	12,000	. . 300 0

From		To	Duty	From		To	Duty
£12,000		£14.000	£330 0	£120,000		£140,000	£2,700 0
14,000		16,000	375 0	140,000		160,000	3,150 0
16,000		18,000	420 0	160,000		180,000	3,600 0
18,000		20.000	465 0	180,000		200,000	4,050 0
20,000		25,000	525 0	200,000		250,000	4,500 0
25,000		30,000	600 0	250,000		300,000	5,625 0
30,000		35,000	675 0	300 000		350,000	6,750 0
35,000	and under	40,000	785 0	350,000	and under	400.000	7,875 0
40,000		45,000	900 0	400,000		500.000	9.000 0
45,000		50,000	1,010 0	500,000		600,000	11,500 0
50,000		60,000	1,125 0	600,000		700,000	13,500 0
60,000		70.000	1,350 0	700,000		800,000	15,750 0
70,000		80.000	1,575 0	800.000		900,000	18,000 0
80,000		90,000	1,800 0	900,000		1,000,000	20,250 0
90,000		100,000	2,025 0	1,000,000	and upwards		22,500 0
100,000		120.000	2,250 0				

Exemptions.—Letters of Administration, Confirmation of any Testament dative, and Inventory of the effects of any common seaman, marine, or soldier, who shall die in the service of his Majesty.

The Form of an Inventory to be exhibited to the Ordinary by the Executor or Administrator of the Goods and Personal Estate of the Deceased, pursuant to the Oath and Bond entered into at the time of obtaining Probate or Administration.

A TRUE and perfect Inventory of all and every the goods, chattels, wares, and merchandizes, as well moveable as not, debts, credits, and other personal estate and effects of William Dawson, late of the parish of in the county of in the diocese of gentleman, deceased, made by us whose names are hereunto subscribed, the tenth day of October, in the year of our Lord one thousand eight hundred and twenty-nine.

	£	s.	d.
Money in the house, the property of the deceased	£80	0	0
£400, 3 per cent. consolidated Bank Annuities, in the books of the Bank of England, in the name of the said deceased at £75	231	10	0
Money on mortgage to John Woollet of Reading	260	0	0
Three horses and harness	65	0	0
Horned cattle, *viz.* 5 cows and 3 oxen . . .	75	0	0
30 sheep, at per average £1	30	0	0
3 swine ditto £1 : 10	4	10	0
Poultry	3	0	0
Corn growing at the time of his death	95	0	0
Corn and hay in barns and out-houses	30	0	0
Carried over . .	£874	0	0

Brought over . .	£874	0	0
Ploughs, cart, waggons, and other implements of husbandry	46	0	0
Wearing apparel	16	0	0
Plate	12	0	0
Household goods and furniture	150	0	0
Books	6	0	0
Lease for 21 years, from Lady-day, 1820, of the testator's house of residence	75	0	0
Rent in arrear, due to the deceased at the time of his death, from the tenants of sundry houses, situate, &c. *(describing them.)*	63	10	0
Other debts due to the deceased, supposed to be recoverable	179	18	0
	£1422	8	0
Debts due to the deceased, but supposed to be irrecoverable	98	11	0
Debts owing by the deceased at the time of his death	113	10	0

Taken and appraised by us, the year and day first above written,

JAMES HOGG, } of
THOMAS GILL, } Sworn appraisers.

[The inventory must be written upon stamped paper or parchment.]

PRACTICAL DIRECTIONS

For obtaining Letters of Administration, Probate of Wills, &c.

WHERE the person dies intestate, the heir at law, or next of kin, may take out letters of administration; and where there is a will, the executors must prove it, and apply for probate. To do this, you must apply to some respectable proctor in Doctors' Commons, with two securities for the due administration of the effects. The proctor will prepare the necessary bond and affidavits, and the letters of administration or probate will issue as a matter of course.

If there be reason to fear that any person may apply for letters of administration, who may not be thought trust-worthy, a caveat may be lodged, by application to a proctor, against letters of administration being granted, until proper inquiry is made as to the fitness of the party.

If the property of the deceased be invested in the public funds, the person administering must apply at the *Will Register Office*, at the *Bank of England*, and *leave* the letters of administration, or the probate of the will, *two clear days;* and where they contain *special bequests*, *three clear days*, before the letters of administration, &c. can be restored, with the proper authority for transferring, selling, or receiving stock, indorsed thereon. A ticket, *dated* and *numbered*, will be given when the letters, &c. are left; and this ticket must be preserved, and produced on the application for the re-delivery of the will or letters of administration.

With this authority you must proceed to the broker, or the clerk who pays the dividends, &c. to complete the business.

The following instructions are issued from the Legacy Duty Department, at the Stamp Office, Somerset Place, and as they form an excellent abstract of the law and practice, they require particular attention from executors, administrators, heirs at law, &c.

A.

*Administration Register No. 18 Folio

Stamp Office, Somerset-place,

LEGACY DUTY DEPARTMENT.

SIR,—*A Copy of the Letters of Administration* granted to   for administering the goods and chattels of   deceased, having been received at this office, and registered to your account for the duties payable in respect of the personal estate of the deceased; the commissioners of this revenue think it proper thus to apprise you thereof, in order that you may not, for the want of information, or through inadvertence, neglect to pay the duty on the residue of such estate, when and as the same shall be distributed by you, or when the same shall be retained by you, either for your own use, or for the use and benefit of any other person, and by such neglect incur the penalties imposed by the Act on defaulters.

And to the same intent, the commissioners direct me further to inform you, that before administrators can *legally* retain the residue, or any part thereof, either to their own use, or for the use and benefit of others, they, or their agent, must *personally deliver* (not transmit) into this office, or to the stamp distributor for the county or neighbourhood in which they reside, an account of the particulars of such residue, with the amount or value thereof, and the duty offered to be paid thereon; and they are to pay the duty either at the head office, or to the said distributor, *within fourteen days* after the same shall have been assessed, *under a penalty of treble the amount of duty.* And if, contrary to these directions, receipts and accounts shall be transmitted by post, or sent to agents to deliver under cover, (*which is in effect the same thing,*) the receipts and accounts so transmitted or delivered, will invariably be laid aside, or returned to the agents unnoticed, and will be considered in all proceedings instituted against the executors, as not having been received by, or presented to, this office; it being quite obvious that receipts and accounts cannot possibly be examined, unless persons attend with them competent to give such information as may be required, and to answer whatever queries may arise in investigating the accounts, and to take the direction of the office on such points as need alteration.

All property liable to the duty, requiring valuation, must be valued by competent persons, and inventories thereof annexed to the account, at the time of its being delivered as aforesaid.

For your guidance and information, in rendering an account of the residue, printed *forms and instructions are provided, with which you may be supplied, on any *personal* application being made at this office, or to the head distributor of stamps in whose district you reside.

In cases where *second Letters of Administration* shall be taken out, the administrators should give notice thereof to this office, stating when, and by what court, the first letters of administration were granted, in order to prevent application being made to them for duties which may have been accounted for, and settled under the first entry of the administration in the books of this office.

* You are requested particularly to notice, that the register and the folio thereof, in which your account is entered, is given at the head of this letter, and must be inserted at the head of the residuary account, and every receipt which you

have occasion to fill up, for property distributed under this administration; and also at the head of every letter which you address to this office: for which purpose it is material that this snouid be preserved; and no answer can be given to any letter in which such reference shall not be inserted. And in answering any other than printed letters, you are also requested to mention the date of the letter to which yours shall be an answer.

I am, sir, your obedient servant,

THOMAS GWYNNE,

Comptroller of the Legacy Duties.

N. B. Letters from persons residing in the metropolis, or its vicinity, *will not be answered*, it being expected that such persons will personally apply to the office for whatever information they may require.

Your attention is particularly requested to the following information:—

When the Duties are to be paid. 1. The duties on distributive shares devolving upon intestacy, are payable at the time such shares are paid or delivered to the next of kin, or when they are *retained* by the administrator or administratrix, either for his or her own use, or for the use of the next of kin.

Distributive Shares devolving to Infants. 2. Distributive shares devolving to infants being vested interests, the duties thereon are not to be withheld until the infants attain their ages of twenty-one years: but are to be accounted for immediately upon such shares being *retained* for their use, and the office forms for paying the duties are to be filled up and signed by the administrator or administratrix, as *retaining* the shares for such next of kin, *they being minors.*

Estates pur autre Vie. 3. Leasehold estates for lives applicable by law in the same manner as personal estate, are chargeable with duty, *i.e.* When the estates are granted to the lessee only, without naming heirs, executors or

administrators after him; or where by the grant being made to the executors or administrators of the lessee, the estates go the executors or administrators, and are assets in their hands. *In the estimate of such estates, the ages of the respective lives must be stated.*

Property devolving to a Widow

4. When the widow of the intestate considers that the whole of the deceased's effects devolve to her exclusively, the most satisfactory evidence must be given that there are no next of kin entitled to a distributive share thereof, before the account can be discharged in the books of this office.

How to account for the residue

5. For the payment of the duty on the residue, a statement of the deceased's personal estate, and of all payments made thereout, must be rendered on the office printed residuary form, and from the clear residue the administrator or administratrix is to deduct the amount of so many of the shares as are to be paid to the other next of kin, and then to fill up and sign the declaration to the form, as being a just and true account of the residue of the personal estate of the deceased; and as offering to pay the duty on his or her own share, and on the shares which he or she is entitled, and intends to retain for the use of any of the next of kin, and the administrator or administratrix, or his or her agent, is to *deliver* (not transmit) the said statement, with a duplicate thereof, into this office, or to the stamp distributor in whose district the administrator or administratrix resides, and pay the duty on the distributive shares expressed in the account, to be retained by him or her, *within fourteen days* after the assessment, *under a penalty of treble the amount of the duty.*

Rents, Dividends, &c. to be included in the Residuary Account, up to the date of the delivery thereof.

6. It having been determined by the Court of Exchequer, in Trinity Term, 1810, in the case of the Attorney-General *v.* Lord George Cavendish, that the duty is chargeable upon the amount or value of the property as it stands *with its accumulations* at the time of the residuary account being delivered, and *not as it stood at the time of the death of the deceased*, it follows, that in rendering an account of the residue, all investments which shall have been made of any part of the deceased's personal estate,

together with the rent of household estates, and all dividends, interests, and profits, arising from the personal estate of the deceased, subsequent to the time of the deceased's death, and all accumulations thereof, down to the time of the administrator's *delivering* the account, and offering to pay the duty thereon, *must be considered as part of the deceased's personal estate*, and accounted for accordingly.

When and how Effects are to be valued.

7. Effects not consisting of money, or securities for money, are to be valued at the time the account is rendered, when inventories and proper valuations thereof will be required to be produced; the stocks are to be valued at the medium price of that day. In the estimate of leaseholds, the following particulars must be stated, *viz.*—

Whether held for years certain, or for years determinable on any life or lives.

If for years certain, the unexpired term for which they are held.

If for years determinable on any life or lives, the number of years, and the age or ages of the life or lives.

The ground rent per annum.

The rent per annum at which they are let, or if not let, the estimated annual value.

The conditions of renewal.

If let, whether let on lease, or from year to year.

The unexpired term of the under-tenant's leases.

Proper Discharges to be taken on distributing the Property to the next of kin.

8. The administrator or administratrix, on paying or delivering the distributive shares to such of the next of kin as are *immediately* entitled thereto, is to deduct the duty payable thereon, from the amount or value of such shares respectively, and to take discharges on the office forms from such next of kin; in which forms, the proportion, and amount or value of the property therein accounted for, must be stated as corresponding with the residuary account delivered to the office.

An Account of the Effects

9. Although the distributive share of the administratrix, as the widow of the deceased, may not be liable to duty, an account of the deceased's

must be rendered although the Administratrix may not be liable to duty.

effects must nevertheless be rendered, as before directed, and must accompany the receipts of the next of kin for the respective shares of the residue upon the receipts being delivered into this office, or to the stamp distributor for the payment of the duties thereon, in order that the commissioners may satisfactorily ascertain the exact amount of the respective proportions of the property chargeable with duty, devolving to the next of kin; and that the amount or value accounted for in the several receipts corresponds therewith; and in rendering an account for this purpose only, no duplicate thereof will be required, nor need the declaration to the form which is to be signed by the administratrix, contain any thing more than that the statement is a "just and true account and valuation of the residue of the personal estate of the deceased."

Insolvent Estates.

10. In cases of insolvency, or when the distributive shares of the next of kin are under the value of £20 each, an account must nevertheless be rendered by the administrator or administratrix in the manner before directed, in order that the commissioners may satisfactorily ascertain that the estate is not chargeable with duty.

How forms and information may be obtained.

11. Persons administering, or their agents *personally* applying at this office, or to the stamp distributor *in whose district they reside*, will be supplied with the necessary forms, and receive whatever further information they may require.

Respecting Receipts and Accounts delivered to the Distributors.

12. Executors and administrators resident in the country, who may be desirous of delivering their legacy receipts and residuary accounts, and of paying the duty thereon to the stamp distributor of the county or neighbourhood in which they reside, are desired particularly to notice that each distributor transmits the receipts and residuary accounts left with him, to the head office every month, and that such receipts and residuary accounts are returned to him on that day month following, duly stamped and registered, to be delivered back to the persons to whom they respectively belong.

*Penalties.

13. Persons paying or receiving any legacy, residue, or share of residue, liable to duty, without taking or signing a proper receipt for the same, in which the duty thereon shall be expressed to have been deducted, will be subject to a penalty of £10 per cent. on the amount or value of such legacy, residue, or share of residue. Every legacy receipt must be dated on the day of signing, and the duty thereon paid within twenty-one days from the date thereof, under a penalty of *ten pounds* per cent. on the amount of the *duty;* and if the duty shall not be paid within *three* months from the date of the receipt, a penalty will then be incurred of *ten pounds* per cent. on the amount or value of the legacy.

* As PENALTIES *are frequently incurred through inadvertence, you are particularly requested to attend to the information given under this head.*

In cases where an executor or administrator shall have paid debts due and owing from the deceased to such an amount as, being deducted from the gross value of the estate and effects, would reduce the amount thereof to a less scale of probate or administration duty, than that on which duty has been paid, it is lawful for the commissioners to return the difference, provided application be made for the same within three years after the date of the probate or letters of administration; and the regulations and form of affidavit necessary to be observed, in order to obtain such return, may be had at the office.

At the bottom of these instructions is given a very proper Caution, against ignorant advertising agents, in respct of probate and legacy duties, as instances daily occur of the persons who employ them being involved in great difficulty and expense, through the extreme ignorance and gross imposition of such agents.

A careful perusal of the heads will enable most persons clearly to understand the law of wills and testaments; but still more fully to explain to those entirely unacquainted with the law, we shall, in conclusion, point out in explanation some material particularities, to which an immediate reference may be requisite on sudden emergencies.

In the first instance may be mentioned the case of a child unexpectedly informed that his father is dead intestate, having left both *real* and *personal* estate, and other children, one or more having had property advanced in his lifetime, and hath also left a widow and a grandchild, or grandchildren.

By 22 and 23 Chas. II. after debts and funeral expenses are paid, the surplusage of intestates' estates (except the estates of femmes covert, that is, married women, to which their husbands have a right, as before mentioned, shall, after the expiration of one full year from the death of the intestate, be distributed in the following manner:— One third shall go to the widow of the intestate, and the residue in equal proportions to his children; or if the children be dead, to their representatives, that is, their lineal descendants. But no child of the intestate (except his heir at law) on whom he settled in his lifetime any estate in lands, or pecuniary portion, equal to the distributive shares of the other children, shall have any part in the surplusage with their brothers and sisters; but if there estates, so given them by way of advancement, are not quite equivalent to the other shares, the children so advanced shall now have so much as will make them equal. But the heir at law shall have an equal part in the distribution with the other children, without any consideration of the value of the land which he hath by descent, or otherwise, from the intestate.

By this statute, the heir at law shall not abate, in respect of the land which he hath by descent, or otherwise, from the intestate; yet if he hath had any advancement from his father in his lifetime, otherwise than by land as aforesaid, he shall abate for the same, in like manner as the other children. And so it seems that *co-heiresses* shall bring together into hotchpot, such advancement (not being lands) as they shall respectively have received from their father, before they shall be entitled to recover their several distributive shares, agreeably to the general purport of the Act; which is evidently to promote an equality as much as may be.

This word *hotchpot* signifies, that if a child advanced by the father, doth, after his father's decease, challenge a child's part with the rest, he must cast in all that he had formerly received, and then take out an equal share with the others.

In respect to borough-english lands, which by custom descend to the youngest son, it became a point upon the

Statute of Distribution, whether the youngest son (to whom the land descended by the custom of borough-english) should abate for these lands, or should be considered as an heir at law, who by the statute is to have a distributive share, without any allowance for lands by descent, which it was decided he was.

In respect to what shall be an advancement, so as to come within the meaning of the statute, it hath been determined, that small inconsiderable sums, occasionally given to a child, cannot be deemed an advancement, or part thereof. Thus, maintenance money, or allowance made by the father to the son at the university, or in travelling, or the like, is not to be taken as any part of his advancement, this being only his education; and it would create charge and uncertainty to inquire minutely into such matters. So, putting out a child apprentice, is no part of his advancement; for it is only procuring the master to keep him for seven years, instead of the parent. But the father's buying an office for the son, though but at will, as a gentleman pensioner's place, or a commission in the army, these are advancements *pro tanto*, that is, for so much. And a provision made by a marriage settlement, although it is in the nature of a purchase, is such an advancement as that a child claiming a distributive share, shall first bring the said advancement into hotchpot.

If the father settles a rent out of his lands upon a younger child, this is an advancement; so likewise if he by deed settles an annuity upon a child, to commence after his death, this is an advancement for so much; and by the same reason, a reversion settled on a child as it may be valued, is an advancement also. And if a child who has received any advancement from his father, shall die in his father's lifetime, leaving children, such children shall not be admitted to their father's distributive share, without bringing their father's advancement into hotchpot.

Where the intestate leaves a widow and children, or the representatives of children, one third of his personal estate shall go to his widow, and the residue to his children; or if dead, to their representatives, that is, their lineal descendants; such of the children, or, the representatives of such of them, as have been advanced as aforesaid, first bringing such advancement into hotchpot, in case they choose to claim their distributive share; and of such advancement, when the same shall be so brought into hotchpot, the widow shall have no advancement.

Where a man marries a woman, and hath issue by her

sons and daughters, and the wife dying, he marries another woman, by whom he hath also sons and daughters, now these, though they are called brothers and sisters, are but brothers and sisters of the half-blood, because they had not both the same father and mother; yet between these no distinction is made; but in respect of collaterals, who may take where there are *no lineal descendants*, there are several precedents of judgments given since the statute, allowing the half-blood to have but an half share; but now these are upon the same footing with the whole blood, in respect to what they are entitled to in the distribution of personal estate. Yet, in respect to real estate, the *whole blood* is always preferred, and the *half-blood* is no blood inheritable by descent. Where a father leaves behind him one or more children, and his widow shall happen to be with child, the child in the mother's womb will be reckoned among the children of the deceased; and if the other children should proceed to a partition of the estate, it will be necessary to lay aside one share for the child that is to be born, and to name a curator to it, who may take care of its interest. But this provision is rendered more effectual by the statute; which, as we have seen, requires that no distribution shall be made till after the expiration of one year from the intestate's death, within which time the child will be born.

Where an intestate's children are all dead, whether they were two, or three, or more, each of them having left children, as it may be one of them two, another three, or more; in this case, where there be only grand-children, their fathers or mothers respectively having died in the lifetime of their grandfather, the grand-children take in their own right, and not by representation of their father or mother deceased; and the courts, where distributions are cognizable, will order an equal distribution to be made. And thus it would be, if there were only great grand-children of the intestate, both his children and grand-children having all died before him.

Where some of the intestate's children are living and some dead, and those that are dead have left children; in this case, the grand-children take by representation, and not in their own right; and the issue of each deceased child stand in the place and stead of their deceased parent. As suppose the intestate to have had three children, A. B. and C., and one of these children to be dead, as it may be A.; leaving three children; and another dead, as it may be B., leaving two; then the distribution must be one third to A.'s

three children, another third to B's two children, and the remaining third to C., the surviving child. But if C. had also died, and left no issue, then A.'s and B.'s five children, being all in equal degree of kindred, would take in their own right, each of them an equal share, in like manner as is just before mentioned.

In case there be no children, nor any legal representatives of them, then one moiety of the intestate's estate is to be allotted to the wife of the intestate; and the residue to be distributed to every the next of kindred of the intestate, who are in equal degree, and those who legally represent them

No representation is to be admitted amongst collaterals after brothers and sisters' children. And in case there be no wife, then all the said estate is to be distributed to and amongst the children. And in case there be no child, then to the next of kindred in equal degree of or unto the intestate, and their legal representatives, as aforesaid.

Hence we may perceive, that where the intestate leaves no child, or any legal representative of a child, that is, lineal descendant, there the wife has a moiety, or one half of his personal estate; *and if there be no wife*, then all the estate is to be distributed amongst the children; and if *there be no child*, then amongst the next of kindred *in equal degree* of or unto the intestate. But if there be a child or representative, that is, lineal descendant, then the next of kindred will be totally excluded. For if a person dies intestate, leaving a descendant of either sex, or of whatsoever degree, such descendant is to be preferred to all ascendants and collaterals.

If after the death of a father, any of his children shall die intestate, without wife or children, in the lifetime of the mother, every brother and sister, and the representatives of them, shall have an equal share with her. Before this statute, if a child had died intestate, without a wife, child, or father, the mother would have been entitled to the whole personal estate, as the father surviving is at this day; and the reason of making this statute was, because the mother might marry and carry away all to another husband. Upon this statute it has been determined, that where, after the death of the father, the son died intestate without issue; but leaving a wife, a mother, three brothers, a sister, and two nieces, the children of a deceased brother; that this is within the statute, and that the intestate's wife shall have but one moiety; and as to the other moiety, the intestate's brothers and sisters and the two nieces, shall come in for an equal

share with the mother. But if there be no brother or sister, or representative of brother or sister, then it is out of the statute, and the mother shall have the whole, as she had before the making of it. Hence it is obvious, that if a child dies without issue, then comes in the father; if the father be dead, then come in the mother, brothers, and sisters; but, if there be no brother or sister, or representative of a brother or sister, which must be a child or children, then the mother takes the half where there is a wife, and the whole where there is no wife; as the father always doth if living, and that in exclusion of the intestate's brothers and sisters, and their children. A brother or sister of the half blood shall have an equal share with those of the whole blood. And it has been determined, that a *posthumous* brother or sister, or brother or sister born after the father's death, shall share equally with the other brothers and sisters.

An intestate's mother, brothers, and sisters, we may observe that each of these share alike.

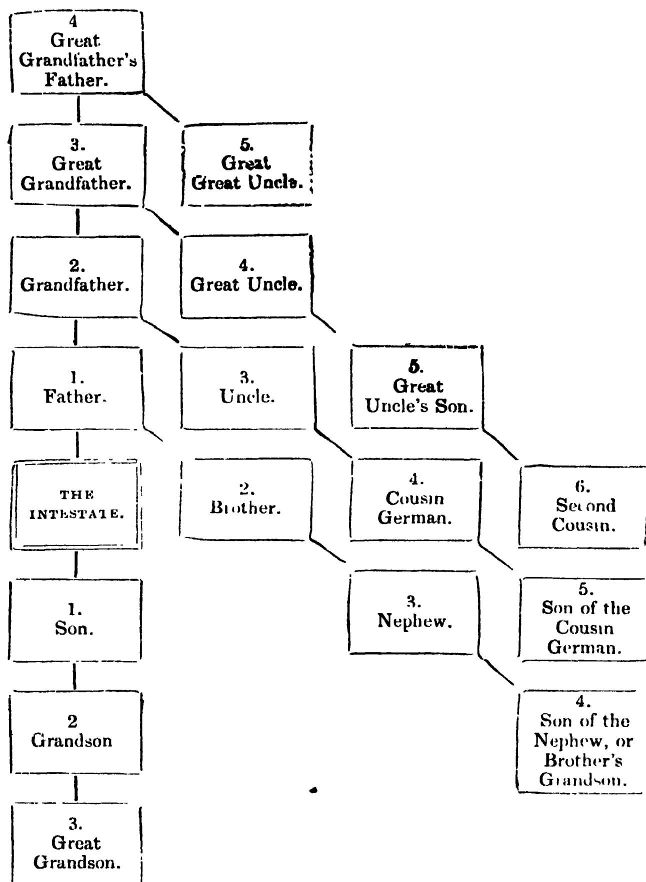
The next of kindred are distinguished either by the right line or by the collateral. The right line is of parents and children, computing by ascendants and descendants; the collateral line is between brothers and sisters, and the rest of the kindred, among themselves. Those of the right line are reckoned upwards as parents, or downwards as children; those of the collateral line are reckoned *ex transverso*, or sideways, as brothers and sisters, uncles and aunts, and such as are born from them. Amongst those there are different degrees of kindred, which are differently reckoned by the civil and canon laws, yet in the ascending and descending lines, the degrees are the same by both laws; but in the collateral line they differ. And for the distribution of personal estate, those decrees of kindred are reckoned according to the computation of the civil law, and not of the common law, which the law of England adopts in the descent of real estates. In the descending line, the son is in the first degree, the grandson in the second, and the great grandson in the third. In the ascending line, the father is in the first degree, the grandfather in the second, and the great grandfather in the third. In the collateral line, as reckoned according to the computation of the civil law, we ascend first to the father, which is one degree; from him to the common ancestor, the grandfather, which is the second degree; from the grandfather we descend to the uncle, which is the third degree; and from the uncle to the cousin-german, or uncle's child, which is the fourth degree. So again we ascend to the father, which is one degree; from the father we descend to the brother, which

is the second degree ; from the brother to the nephew, which is the third degree ; and from the nephew to the son of the nephew, which is the fourth degree.

If a person die intestate, leaving none of those relations, the general rule by the Statute of Distribution is, that his personal estate shall go to his next of kindred in equal degree; and those may be the children of his uncles or aunts, and his brother's or sister's grand-children, all of whom being in the fourth degree will share equally alike; and if there is but one person that can take, as being the only person who is the nearest of kin, the statute vests the whole in that person. For further discovering the degrees of kindred, when none of those that have been mentioned are to be found, we may observe the table inserted in the succeeding page, which is laid down conformably to what has been before mentioned respecting the mode in which the different degrees of kindred are to be reckoned. We may likewise observe, that where there are relations, both by the father's side and mother's in equal degree of kindred, they share equally alike ; for here there is no difference (though there is in respect of real estate,) whether the relations be by the father's side or by the mother's; but those who are nearest of kin will be preferred, be it by either side ; and the half blood will be equally entitled with those of the whole blood.

The 3 & 4 Wm. IV. c. 106, an abstract of which will be found in p. 712, contains further regulations on this subject, to which it may be useful to refer in illustration, although there is nothing in the enactments differing from the principles here laid down ; and it must be remembered that the act referred to does not affect the descent which takes place before the 1st of January, 1834.

It may be also useful to refer to 3 & 4 Wm. IV. c. 105, which makes some alteration in the law of *dower*, in marriages contracted after the 1st of January, 1834.



If the intestate have no kindred, his real estate will escheat to the king, or to the lord of the manor, or other person entitled thereto by virtue of any grant from the crown; for where no person can claim any property, there the king shall be entitled by his prerogative.

Besides what has been mentioned on this subject, it must be *consanguinity*, or relationship by *blood*, and not *affinity*, or relationship by *marriage*, to give a title to the

heir at law of an intestate; so that persons who have married any of the intestate's family or relations, who have died before him, can derive no claim from such marriage; as, for instance, suppose a man to die intestate, and his only issue had been a son and a daughter, who had both married and died before him, leaving a wife and husband who survived him; neither this wife nor husband would have any part of A.'s real or personal estate, though the *issue* of his own son and daughter, with his wife (if such were living), would have the whole; and if none of them were living, the whole *personal estate* would go to his next of kindred, as before described, and his *real estate* as will be shown hereafter. If A. had died intestate without wife or child, and his only kindred had been a brother and sister, both of whom had married and died before him, leaving a wife and husband who had survived him, neither the wife nor husband would be entitled to any part of his estate, as he would die *without kindred*, and his *real estate* would escheat to *the king*, or *lord of the manor*, or other person entitled by any grant from the crown, and his *personal* estate would also vest in the king; and thus it would be in respect to the husband of A.'s mother, and the husband or wife of any one that were his next of kin, and had married and died before him; but, in case any of his next of kin survived him for ever *so short a time* even an hour, and died in ever so short a time after, then the husband or wife of such next of kin would be entitled, the husband in right of his deceased wife, or the wife in right of her deceased husband, but neither of them as being next of kin to A.

The first rule in the descent of real estates of inheritances is, that they shall lineally descend to the issue of the person last actually seised, *in infinitum*, or for ever; but shall never lineally ascend. When therefore a person dies so seised, the inheritance first goes to his issue: as if there be A. B. and C., grandfather, father, and son; and B., the father, purchases land and dies; his son C. shall succeed him as heir, and not A. the grandfather; to whom the land shall never ascend, but shall rather escheat to the lord.

The second rule is, that sons shall be admitted before daughters; so, if A. hath two sons, C. and D., and two daughters, E. and F., and dies; first C., and (in case of his death without issue) then D. shall be admitted to the succession, in preference to both the daughters.

The third rule is, that where there are two or more

males in equal degree, the eldest only shall inherit; but the females all together. As if a man hath two sons, A. and B., and two daughters, C. and D., and dies; A. his eldest son, shall alone succeed to his estate, in exclusion of B. the second son, and both the daughters; but if both the sons die without issue before the father, the daughters C. and D. shall both inherit the estate as co-parceners.

The fourth rule is, that the lineal descendants, *in infinitum*, of any person deceased, shall represent their ancestor; that is, shall stand in the same place as the person himself would have done, had he been living. Thus the child, grandchild, or great grandchild (either male or female) of the eldest son, succeeds before the younger son, and so *in infinitum*. As if there be two sisters, A. and B., and A. dies leaving six daughters, and then J. S. the father of the two sisters dies without other issue; these six daughters shall take among them exactly the same as their mother A. would have done, had she been living; that is, a moiety, or one half of the lands of J. S. in coparcenary: so that, upon partition made, if the land be divided into twelve parts, B. the surviving sister shall have six thereof, and her six neices, the daughters of A. one apiece.

The fifth rule is, that on failure of lineal descendants, or issue of the person last seised, the inheritance shall descend to the blood of the first purchaser, subject to the three preceding rules. Thus, if G. S. purchases land, and it descends to J. his son, and J. dies without issue, whoever succeeds to this inheritance, must be of the blood of G. S. the first purchaser, who acquired the estate to his family, whether by sale, gift, or by any other method except descent. So if A. dies without issue, his estate shall descend to C, his brother, who his lineally descended from D. his next immediate ancestor or father. On failure of brethren or sisters, and their issue, it shall descend to the uncle of A., the lineal descendant of his grandfather, and so on *in infinitum*.

The heir, however, need not be the nearest kinsman absolutely, but only *sub modo;* that is, he must be the nearest kinsman of the whole blood; for if there be a much nearer kinsman of the half blood, a distant kinsman of the whole blood, shall be admitted, and the other entirely excluded.

In collateral inheritances, the male stock shall be preferred to the female, (that is, kindred derived from the blood of the male ancestors shall be admitted before those

from the blood of the female,) unless where the lands have, in fact, descended from a female. Thus the relations on the father's side are admitted *in infinitum*, before those on the mother's side are admitted at all; and the relations of the father's father, before those of the father's mother, and so on. Yet, whenever the lands have notoriously descended to a man from his mother's side, this rule is totally reversed, and no relation of his by his father's side, as such, can ever be admitted to them; because he cannot possibly be of the blood of the first purchaser. And so, *e converso*, if the lands descended from the father's side, no relation of the mother, as such, shall ever inherit.

Disposal of Estates held by Tenancy by the Courtesy of England.

The husband of a wife seised in fee simple, or fee tail, before marriage, *who has issue by her*, although the issue afterwards die or live, will hold the land *during his life*, as tenant by the courtesy of England, after the death of his wife, but not before. The seisin of the wife, however, must be perfect, and not consist in a mere right of possession; so that remainders or reversions are not subjects of tenancy by courtesy; but courtesy will extend over leases for years, and in cases of advowson, where the church is not void during the life of the wife, as no actual seisin could be had of it.*

The issue, however, must be born *alive*, and *during the life of the mother;* for if the mother dies in labour, and the child is extracted by the Cæsarian operation from the womb, the husband will not be tenant by courtesy; because, at the instant of the mother's death, he clearly was *not entitled*, as having had no issue *born;* but the land descended to be child, while he was yet in his mother's womb, and, being so vested in him, cannot be taken from him. And if a woman be tenant in tail *male*, and hath only a *daughter* born, the husband cannot be tenant by courtesy, for the issue is *incapable* of inheriting in tail male: and if a woman be delivered of a monster, which hath not human shape, it is not capable of inheriting; but if it have human shape, however deformed, it is capable of inheritance.

By becoming tenant by courtesy, the husband is entitled to hold the estate during his life, and, immediately after his death, the same must inevitably go to the heir, whether

* If the wife be an *idiot*, the husband cannot be tenant by courtesy of her lands, the king by his prerogative being entitled to them, the instant she herself has any title.

he be a child or distant relation of the wife; and this the husband, as being only tenant by courtesy, can in no wise prevent; for he cannot alien this estate for any longer term than his own life.

Customs of York and London, with reference to the descent of Property.

In York, as well as in the city of London, a man may by will dispose of the whole of his personal estate to whom he thinks fit, and the claims of the widows, children, and other relations to the contrary, are totally barred. But as to intestacy—if a man, being an inhabitant or an householder within the province of York, and dying there or elsewhere intestate, and at the time of his death hath a wife, and also a child or children, his goods (after paying his debts, and deducting the widow's apparel and furniture of her bed-chamber,*) shall be divided into three parts; whereof the wife ought to have one part, the child or children another part, and the third part (which is called the death's or dead man's part,) is distributable by the statute; of which dead man's part, by the statute, the wife shall have one third, and the other two thirds shall be distributed amongst the children: so that, dividing the whole into nine parts, the wife shall have four, and the children five; in like manner as is after-mentioned concerning the custom of the city of London. But if by settlement a jointure is limited to the wife, in bar of all her demands out of the personal estate of her husband by virtue of the custom, in such case it is as if there were no wife with respect to the customary part; so, if it is in bar of all her demands, by virtue of the said custom, *or otherwise*, she shall be debarred also of any distributive share by the statute. And as to the children; if the intestate hath a wife, and a child or children, which child is heir to the intestate, or which children were advanced by the father in his lifetime; in this case, it is as if he had no child, and therefore his goods shall be divided into two parts; whereof the wife is to have one part to herself, and the other half is distributable by the statute as we shall see more of hereafter. If the intestate hath

* By tae general and ancient custom of the province of York, widows have been tolerated to reserve to their own use, not only their apparel and a convenient bed, but a coffer with divers things therein necessary for their own persons; which things have been usually omitted out of the inventory of their deceased husband's goods, unless the husband was so far indebted, as the rest of his goods would not suffice to discharge the same.

neither wife nor child at the time of his death, his whole personal estate (the funeral expenses, and other necessary charges being first deducted,) shall be disposed of in due course of administration, as now falling under the direction of the Statute of Distribution.

As to the child's being excluded as being heir; this, we may observe, is one of the main points wherein the custom of the city of London and province of York differ; as in the former, whatever real estate the child has, either by descent from his father, or conveyed to him by his father in his lifetime, it will in no wise bar the child from receiving his share of his father's personal estate; whereas in the latter he will be totally barred from receiving any part thereof *by the custom,* if he should have any real estate by descent, or otherwise, from his father. For in York not only the heir of lands holden in fee-simple is thereby barred from the recovery of a filial portion, but he also that is heir in fee-tail, either general or special; and although the lands be of very small revenue, perhaps not more than a noble, yearly rent, and the goods very great in comparison of so small a rent (as may be £1000, or more), even in this case the heir is barred from the hope of a filial portion: and not only that heir is excluded from a filial portion who doth enter upon the land immediately after his father's death, but he also who is heir in reversion, is heir; and being heir, can have no filial portion: so by this it may fall out very hard with the heir in reversion; for if he should die in the mean time, before he could lawfully enter to those lands which are his only in reversion, he could reap no benefit either of his father's lands or goods; yet he must be content with his lot, and though not he, but his heir shall enjoy the land at the time appointed. And although the heir receive the land by settlement made upon his father's marriage, yet he is heir so as to be excluded thereby from a filial portion; as where the father having by settlement on his marriage settled his real estate to himself for life, part to his wife for her jointure, and the remainder of the whole to his first and other sons in tail, remainder to his own right heirs; the eldest son was thereby excluded, *by the custom of the province of York,* from having any share of his father's personal estate. And if the heir holds lands by deed of feoffment in mortgage, or with clause of redemption; that is to say, upon condition that if the feoffer pay unto him a sum of money at a certain day, that then the feoffer may re-enter, and the deed or grant be void; yet in the mean

time, until the condition be performed, and the land redeemed, if he should demand any filial portion he is barred, because as yet he is heir to the deceased. But if the lands should be redeemed, and the money satisfied, then it is thought that he may recover a filial portion; because then he is not heir to the deceased, nor the advancement certain which was made by the father in his lifetime.

As concerning the advancement, whereby a child may be barred from receiving a filial portion; this advancement must be by the father in his lifetime. And if the father bestow any thing upon another for his child's sake, or for the good of his child, this is no such preferment as will hinder a child of his filial portion: and, therefore, if the father bestow any thing upon a man of trade, to take his son for an apprentice, and to teach him his mystery, this is no advancement to the effect aforesaid; or if the father bestow any thing upon a schoolmaster, or tutor in the University, for the increase of his child's knowledge in learning, or for any degree there to be obtained, this is no advancement to exclude the child of a filial portion.

But if a portion be given to a child, in lieu and satisfaction of a filial portion, and the child be of age, and in consideration thereof doth release his future filial portion, then the child will be barred of any future claim: as a child when of age, for a valuable consideration, may release his future filial portion. If the father in his lifetime bestow a lease upon his child, or grant unto him an annuity for life out of his lands, though it be in such manner as the child shall not reap any benefit thereby, so long as the father lives, but after his death; this is holden for a preferment or advancement: because it was assured unto him in his father's lifetime. And if the father bestow a competent portion with his daughter in marriage upon him that shall marry her, this is such an advancement as will bar her from a demand of a filial portion. But by the word *portion* is to be understood, not only a sum of money, or part of the father's goods and chattels, but also lands and annuities bestowed by the father upon the son. And *competent*, signifies equal, or not far inferior to that quantity which otherwise, according to the custom of the province, should fall to be due to the child, after the rate and proportion of the father's estate, at the time when he doth bestow any such thing upon his child.

And, since Swinburne's days, it has prevailed as the custom of the province of York, that children (exclusive of

the heir at law) not advanced to their full proportion of the children's part, shall be admitted to come in for their share of the said children's part, bringing thereunto their partial advancements into hotchpot; in conformity also to the custom of London, and to the measures of the Statute of Distribution, and the rules observed by the Courts of Equity in all such-like cases.

When there is a wife, child, or children, the course of distribution of intestates' effects within the province of York stands thus—

If a person die intestate, leaving no wife, but an only child, which child is heir at law, or advanced, or partly advanced, or not advanced; in all these cases it makes no difference; for, one way or other, such child shall have the whole clear personal estate. For supposing such child to be heir at law, he shall have nothing by the custom, but by the statute he shall have the whole as next of kindred. If he is advanced, he shall likewise have nothing by the custom, but by the statute in like manner he shall have the whole. If he is partly advanced, he shall have one half by the custom, there being no other child with whom to bring his partial advancement into hotchpot, and the other half by the statute. So in like manner, if he is not at all advanced, he shall have one half by the custom, and the other half by the statute.

If such person have divers children, one of whom is heir at law, and the others are advanced; in this case, with respect to the custom, it is as if he had no children: none of them can claim any thing by the custom; and (the younger children being supposed to be fully advanced) the heir at law by the statute shall have the whole. So here we may observe, as before hinted, that as to the custom the heir at law is barred by having lands; yet by the statute he is in no wise barred by any lands that he may have had by descent or otherwise from the intestate.

If such person have divers children, the first of which is heir at law, the second advanced, the third partly advanced, and the fourth not advanced: in this case, the child partly advanced, and the child not advanced, shall have one half equally betwixt them by the custom, the child partly advanced first thereunto bringing his partial advancement into hotchpot; and the other half (which is the dead man's part,) shall be distributed by the statute equally amongst all the said children, (the second only excepted, who is supposed to be fully advanced already,) share and

share alike But if the heir at law hath been advanced by his father, otherwise than by lands, or as heir at law, he shall bring such advancement into hotchpot with his brothers and sisters, otherwise he shall have no distributive share by the statute.

In respect of the dead man's part, which is distributable by the statute, we must observe as to this, that the representatives of children dead are admitted to a distributive share in the place of the deceased child or children whom they represent; but not so of the customary part by the custom.

If a man hath a wife and no child, she shall have (besides her convenient bed and apparel) one half by the custom, and the other half (being the dead man's part,) shall be distributed by the statute; of which dead man's part by the said statute she shall have one half, and the other half shall go to the next of kindred to the deceased in equal degree: so that, dividing the whole into four parts, she shall have three, and they shall have one. But in respect to the dead man's part, although there be no child, yet if there hath been a child, and there are any legal representatives, that is, lineal descendants of such child, then of the dead man's part, by the said statute, the wife shall have but one third, and the representatives shall have the other two thirds: so that dividing the whole into six parts, she shall have four and they shall have two.

If a man hath a wife, and also a child or children, one of which children is heir at law, and the others are advanced; in this case, with respect to the custom, it is the same as if he had no child; and consequently the wife shall have one half by the custom, and the other half (being the dead man's part) shall be distributed by the statute; of which dead man's part, by the said statute, she shall have one third, and the other two thirds shall go to the heir at law; so that, dividing the whole into six parts, she shall have four, and he shall have two.

If a man hath a wife, and also a child or children, any one or more of which children are not advanced, by the custom she shall have one third part, and the children not advanced shall have another third part. and the remaining third part (being the dead man's part,) shall be distributed by the statute: of which dead man's part, by the said statute, she shall have one third, and the other two thirds shall be distributed amongst the children; so that, dividing

the whole into nine, she shall have four, and they shall have five.

To illustrate this, let us here, for example, suppose a man inhabiting within the province of York dies intestate, leaving a clear personalty of £9000, and leaving a widow and four children; the first being heir at law to freehold lands, and having received likewise of his father in his lifetime £400, to set him up in trade: the second advanced to the amount of £3000; the third partly advanced to the amount of £600; and the fourth not at all advanced. The question is, how this personalty shall be divided? First of all, the widow shall have one third part by the custom, as her widow's portion, to wit, £3000. Another third part, by the said custom, shall be distributed amongst the children; of which the heir at law (as such,) by the said custom is excluded from recovering any share; the second son also, as being fully advanced, is excluded; but hereunto the third son shall bring his partial advancement of £600 into hotchpot, and then the third and fourth sons shall divide £3600 equally between them; but the real benefit thereof to the third son will be but £1200, and to the fourth son £1800. The remaining third part of the said personalty, which is the dead man's part, shall be distributed by the statute; of which, by the said statute, the widow shall have one third, to wit, £1000; and the residue, being £2000, shall be distributed equally amongst the said three children, *viz.* the heir at law, and third and fourth sons, (the heir at law being let in for so much by the statute; and the second son being still excluded, as having received more than his just proportion of his father's whole personal estate); but hereunto the heir at law shall first bring his partial advancement of £400 into hotchpot, and so the said three children shall divide the whole £2400 equally amongst them; but the real benefit to the heir at law will be but £400, and to the said two younger children £800 each. So that of the whole clear personalty of £9000, the widow shall have £4000, the heir at law £400, the second child nothing, the third child £2000, the fourth child £2600; which, added together, makes the £9000. But if by settlement a jointure is limited to the wife, in bar of all her demands out of the personal estate of her husband, by virtue of the custom or otherwise, she will be debarred of any share, either by the custom or statute; and in such case it will be, as if there were no wife, as has been mentioned; and consequently the children must have the whole.

By this custom, the customary share which the children

are entitled to, vests in them *immediately on the intestate's death;* quite different to the customary share which the children of a freeman of London are entitled to by the custom of London, which does not vest in them till they are *twenty-one years of age;* wherefore, until they attain that age, they cannot dispose of it by will; and if they die under that age, their share survives to the other children, as has been shown. But here, the customary share vests immediately on the intestate's death, as doth the share the children are entitled to by the Statute of Distribution; so that the whole is vested in them immediately on the intestate's death; and being so vested, in case either child dies under age, and without will, the share of such child will fall under the Statute of Distribution. And if the infant be of the age of fourteen, if a male, or twelve if a female, he or she may dispose thereof by will; as has been before mentioned concerning what an infant is intitled to by the Statute of Distribution.

If a freeman of London dies in London, or elsewhere, *intestate,* and though his estate doth not lie in the city, but elsewhere, his children are entitled to their share of his personal estate by the custom. And, if the freeman dies, leaving a widow and a child, or children, his personal estate (after his debts are paid, and the customary allowance for his funeral, and for the widow's chamber, are deducted thereout) is, by the custom of the city, to be divided into three equal parts, and disposed of in the following manner; to wit, one third part thereof to the widow, another third part to the children, and the other third part (being taken out of the custom) is now, by the statute of 1 Jas. II. c. 17, made subject to the Statute of Distribution; and so, dividing the whole into nine parts, four ninths belong to the wife, and five ninths to the children. So, if a man dies worth £1800, leaving a widow and two children, the estate shall be divided into eighteen parts, whereof the widow shall have eight, six by the custom, and two by the statute, and each of the children five, three by the custom, and two by the statute; if he leaves a widow and one child, she shall still have eight parts as before, and the child shall have ten, six by the custom, and four by the statute. And if there should be an after-born child, such child will come in with the rest for a customary share of the father's personal estate. If the freeman leaves a widow, and no child, the widow shall have three fourths of the whole; two by the custom, and one by the statute, and the remaining fourth shall go

by the statute to the next of kin. If he hath no wife, but hath children, the half of his personal estate belongs to his children, and the other half (being, as it is called, the dead man's part, because formerly the ordinary, or he to whom the ordinary committed administration, was to dispose of the same to pious uses, for the benefit of the deceased's soul,) is now distributable amongst the children by the statute. And if he hath neither wife nor child at the time of his death, then the whole belongs to the deceased, and is distributable by the statute. As to the freeman's *grandchildren*, the custom does not extend to these, as hath been determined in several cases.

If any of the children are advanced by the father in his lifetime with any sum of money (not amounting to their full proportionable part), they shall bring that portion into hotchpot with the rest of the brothers and sisters, but not with the widow, before they are entitled to any benefit under the custom; but if they are fully advanced, the custom entitles them to no further dividend. The advancement must be of money, or personal estate. And a settlement of a real estate on a child is no advancement, nor to be brought into hotchpot; and if a citizen conveys to a child land of inheritance, though it be expressed for advancement, it bars no child's part: but such may come in for a share of the personal estate with the rest.

And small inconsiderable sums, occasionally given to a child, cannot be deemed an advancement, or part thereof; neither is maintenance money, or an allowance made by a freeman to his son at the University, or in travelling, &c. to be taken as any part of his advancement, this being only his education; and it would create charge and uncertainty to inquire minutely into such matters. So putting out a child apprentice is no part of his advancement, for it is only procuring the master to keep him for seven years instead of the parent.

The child of a freeman of London, when of age may, in consideration of a present fortune, bar herself of her customary part; as where the father, on his daughter's marriage, agreed to give her £3000, which, she being of age, covenanted to receive in full of her customary share as a freeman's daughter; and though it was objected, that such a future right cannot be released, and that parents might make an ill use of the power they have over their children, in forcing them to give such discharges, yet this was held a good bar of the custom, there being no fraud in the transaction.

As to children partly advanced, bringing their advancement into hotchpot, it may be observed, as has been mentioned, that it is to be brought in among the brothers and sisters only, but not with the widow. And where a freeman of London hath but one child, and he hath received some portion from his father, and the father dies, leaving this child and a wife, the child shall have his full orphanage part, without any regard to what he hath already received.

If a freeman, having several children, or but one child, doth *fully advance* all his children, or his single child, this satisfies the custom, and is the same as if he had no child, and his personal estates shall go as if there was none, the wife having a moiety, and the other moiety falling under the direction of the Statute of Distribution.

If the freeman dies intestate, leaving no wife, but an only child, advanced, or partly advanced, or not advanced, it makes no difference; for, one way or other, such child has the clear personal estate.

If the freeman leaves no wife, but divers children, as suppose them to be three, the first of which is advanced, the second partly advanced, and the third not advanced; in this case, the child partly advanced, and the child not advanced, shall have one half equally betwixt them by the custom; the child partly advanced first thereunto bringing his partial advancement into hotchpot; and the other half (which is called the dead man's part) shall be distributed by the statute equally between those two children, the first child being supposed to be fully advanced already.

As to the representatives of children dead; those, we must observe, are admitted by the statute to a distributive share of the dead man's part, in the place of the deceased child or children whom they represent; but not so of the customary part by the custom.

The orphanage share not being fully vested in the children till they attain the age of twenty-one, a child entitled to an orphanage share of his father's personal estate dying under twenty-one, cannot devise it by his will; for by the custom it survives to the other children, as hath been mentioned. But a child may devise the share which he hath by the Statute of Distribution.

The modes of distributing property by custom, in cases of *intestacy*, are in some measure getting obsolete, as they are rarely worth the trouble and expense of inquiring after, or settling in this manner property of inconsiderable value; but as they would prevail, if appealed to, they are necessary to be known, for the safety of the administrators, who might

otherwise run themselves into difficult dilemmas, by disposing of property in a manner which would not relieve them from their responsibilty.

But the knowledge of them is of further value, as pointing out to parties who wish to leave property in a particular manner, how the law will dispose of it, if they do not take the trouble of attending to their own affairs, by regulating the disposal of it themselves, and preventing the disputes and difficulties that arise from individuals dying intestate, and leaving their property to find its way to the parties intended to possess it, or not, as the chance may be; by which means it often happens that a great part is consumed in litigation, which no reasonable man would ever run the risk of entailing upon his successors. And when a person may avoid all this, by merely taking the trouble of setting down what he wishes to be done, it seems a very gross absurdity to neglect so simple a duty as this, in contempt of the advantages which may arise from its performance,

It it not, however, for us to persuade the world that a man may make his will without dying the next day; and dispose of his property while he lives, without any very great danger to his health; these superstitions are fast wearing away, and the cause of *intestacy* is now very generally an indifference to the end of life, while the health remains unaffected; but the *evil* is the same, whatever may be the *cause;* and having pointed out the mode in which the mischief may be avoided, we cannot to earnestly impress upon our readers the necessity of paying a proper attention to our advice. It has been said, that one chancery suit will devour three estates; and it is certain that the Court of Chancery has been largely fattened with the spoils of the dead, from a want of a proper distribution of them, while the original possessors were living.

CRIMES AND MISDEMEANORS.

All persons are responsible to the laws respecting crimes and misdemeanors, who are not exempt from such reponsibility for want of mature age, or insufficiency of intellect. But persons who are insane, or imbecile, and those who, from their youth, may be supposed incompetent to form a correct judgment, are not legally accountable for any legal offence which they may commit: yet the time of sufficient discretion will not be so much determined by the age of the party as by the degree of sense and intelligence which the party may possess; and where very young children have shown, by the caution and preparation with which they conducted themselves, that they were aware that they were about to offend the laws, they have been held legally reponsible, and the law has been left to take its course, even to its last extremity. And in cases of alleged insanity, if there be any doubt, whether the party be insane or not, this is to be tried by a jury. And if he be so found, a total idiotcy, or absolute insanity, excuses from the guilt of any criminal action committed under such deprivation ot the senses; but if a lunatic hath lucid intervals of understanding, he is to answer for what he does in those intervals, as if he had no deficiency.

If, in the performance of a lawful act, any mischief follows, the party is excused from guilt; but if a man be doing any thing unlawful, and a consequence ensue which he does not foresee or intend, as the death of a man, or the like, his want of foresight is no excuse; for, being guilty of one offence which is unlawful, he is criminally guilty of whatever consequence may follow.

Ignorance or *mistake*, wherein a man, intending to do a lawful act, does that which is unlawful, is not criminal. But this must be an ignorance or mistake of fact, and not

an error in point of law. As, if a man, intending to kill a thief or housebreaker, in his own house, by mistake kill one of his own family, this is no criminal action: but if a man thinks he has a right to kill a person excommunicated or outlawed, wherever he meets him, and does so, this is wilful murder.

If a woman commit theft, burglary, or other civil offences, against the laws, by the coercion of her husband, or even in his company, she is not guilty of any crime; being considered as acting by compulsion, and not of her own will. But this rule admits of an exception in crimes that are *mala in se*, and prohibited by the law of nature, as murder and the like. In treason also, no plea of coverture can excuse the wife, no presumption of the husband's coercion can extenuate her guilt. And a wife may be indicted and set in the pillory with her husband, for keeping a brothel. And, in all cases where the wife offends alone, without the company or coercion of her husband, she is responsible for her offence, as much as any unmarried women; and generally in cases of *misdemeanor*.

All persons committing crimes are considered either as principals or accessories.

A man may be *principal* in an offence in two degrees. A principal in the first, is he that is the actor or perpetrator of the crime; and, in the second, when he is present, aiding and abetting the fact to be done. Which presence need not always be an actual standing by, within sight or hearing of the fact; but there may be also a constructive presence, as when one commits a robbery or murder, and another keeps watch or guard at some convenient distance. And this rule hath also other exceptions; for, in case of murder by poisoning, a man may be a principal felon, by preparing and laying the poison, or persuading another to drink it who is ignorant of its poisonous quality, or giving to him for that purpose, and yet not administer it himself, nor be present when the very deed of poisoning is committed. And the same holds with regard to other murders committed in the absence of the murderer, by means which he had prepared beforehand, and which probably could not fail of their mischievous effects; as, by laying a trap or pitfall for another, whereby he is killed; letting out a wild beast, with an intent to do mischief; or exciting a madman to commit murder, so that death ensues. In all these cases, the party offending is guilty of murder as a principal.

An *accessory* is he who is not the chief actor in the offence, nor present at its performance, but is in some way

concerned therein, either *before* or *after* the fact committed.

In high treason there are no accessories, but all are principals; the same acts that make a man accessory in felony, making him a principal in high treason. In murder and felonies there may be accessories, except only in those offences which by judgment of law are sudden and unpremeditated, as manslaughter and the like; which therefore cannot have any accessories before the fact. So, too, in simple larceny, and all crimes under the degree of felony, there are no accessories either before or after the fact; but all persons concerned therein, if guilty at all, are principals.

As to accessories *before* the fact; they are those who, being absent at the time of the crime committed, do yet procure, counsel, or command others to commit a crime. Herein absence is necessary to make a man an accessory. If A. advise B. to kill another, and B. does it in the absence of A., B. is principal, and A. is accessory to the murder. And this holds, even though the party killed be not in existence at the time of the advice given; as if A., the reputed father, advise B., the mother of a bastard child unborn, to strangle it when born, and she does so, A. is accessory to this murder. And it is also settled, that whoever procures a felony to be committed, though it be by the intervention of a third person, is an accessory before the fact.

It is likewise a rule, that he who in anywise commands or counsels another to commit an unlawful act, is accessory to all that ensues upon that unlawful act, but is not accessory to any act distinct from the other.

By the 7 Geo. IV. c. 64, sec. 9, if any person shall counsel, procure, or command any other person to commit any felony, he shall be deemed guilty of felony, and may be indicted and convicted, either as an accessory before the fact, together with the principal felon, or after the conviction of the principal felon, or may be indicted and convicted of a substantive felony, whether the principal felon shall or shall not have been previously convicted, or shall or shall not be amenable to justice, and may be punished in the same manner as any accessory before the fact to the same felony; and the offence may be inquired of, tried, and punished by any court having jurisdiction to try the principal felon, in the same manner as if such offence had been committed at the same place as the principal felony, although committed on the high seas, or at any

place on land, whether within his majesty's dominions or without; and in case the principal felony shall have been committed within one county, and the offence of counselling, procuring, or commanding, within any other county, the last-mentioned offence may be inquired of, tried, and punished in either of such counties.

By sec. 10, the same provisions are enacted with regard to accessories after the fact of felony.

And if any principal offender shall be in anywise convicted of any felony, it shall be lawful to proceed against any accessory, either before or after the fact, in the same manner as if such principal felon had been attainted thereof, notwithstanding such principal felon shall die, or be pardoned, or otherwise delivered before attainder.

An accessory *after* the fact may be where a person, knowing a felony to have been committed, receives, relieves, comforts, or assists the felon. Therefore, to make an accessory *ex post facto* it is requisite that he know of the felony committed, and that he receive, relieve comfort, or assist him. And, generally, any assistance whatever given to a felon, to hinder his being apprehended, tried, or suffering punishment, makes the assistor an accessory; as furnishing him with a horse to escape his pursuers, money or victuals to support him, a house or other shelter to conceal him, or open force or violence to rescue or protect him.

So likewise, to convey instruments to a felon to enable him to break gaol, or to bribe the gaoler to let him escape, makes a man an accessory to the felony.

To buy or receive stolen goods, knowing them to be stolen, falls under none of these descriptions; but by the 5 Anne, c. 31. and 4 Geo. I. c. 11, all such receivers are made accessories, (where the principal felony admits of accessories,) and may be transported for fourteen years;* and in the case of receiving linen goods stolen from the bleaching grounds, the receivers are, by statute, declared felons. The law in this respect has also been altered and extended by 7 and 8 Geo. IV., c. 29, s. 54, which enacts that where the original offece is felony, the receivers of stolen property may be tried either as *accessories* after the fact, or for the substantive felony; and (s. 55,) where the

* Buying goods at an undervalue is presumptive evidence that the buyer knew them to be stolen; and *recent* possession of stolen property may implicate the possessor in the principal theft, unless he can satisfactorily account for such possession.

original offence is a misdemeanor, receivers may be prosecuted for a misdemeanor.

The felony must be complete at the time of the assistance given, else it makes not the assistant an accessory. As, if one wound another mortally, and, after the wound is given, but before death ensues, a person assists or receives the delinquent, this does not make him accessory to the homicide; for, till death ensues, there is no felony committed.

But where a felony is actually complete, the nearest relations are not suffered to aid or receive one another. If the parent assist his child, or the child the parent; if the brother receive the brother, the master his servant, or the servant his master; or even if the husband receive his wife; who have any of them committed felony, the receivers of the offenders become accessories after the fact.

OFFENCES AGAINST RELIGION.

Having shown who may be guilty of crimes, we will now proceed to enumerate the several species of offences known to the law of England, and shall first describe those against religion, although many of them now remain dead letters on the statute book.

Of this species the first is that of Apostacy, or a total renunciation of Christianity, by embracing either a false religion, or no religion at all. This offence can only take place in such as have once professed the true religion. By the 9 and 10 Wm. III. c. 32, if any person educated in, or having made profession of the Christian religion, shall by writing, printing, teaching, or advised speaking, deny the Christian religion to be true, or the holy Scriptures to be of divine authority, he shall upon the first offence, be rendered incapable of holding any office or place of trust; and for the second, be rendered incapable of bringing any action, being guardian, executor, legatee, or purchaser of lands, and shall suffer three years' imprisonment, without bail; except he repent within four months after his first conviction, and renounce his error in open court.

A second offence is that of Heresy, which consists, not in a total denial of Christianity, but of some of its essential

doctrines, publicly and obstinately avowed. By the 9 and 10 Wm. III., c. 32, it was enacted, that if any person, educated in the Christian religion, shall, by writing, printing, teaching, or advised speaking, deny any one of the persons of the Holy Trinity to be God, or maintain that there are more Gods than one, he shall suffer the same penalties as in the case of apostacy; but this Act is now repealed, and denying the doctrine of the Trinity is not a legal offence in England.

Another species of offences against religion are those which effect the Established Church. And these are either positive or negative: *positive*, by reviling its ordinances; or *negative*, by nonconformity to its worship.

And first, of REVILING THE ORDINANCES of the Church. It is provided, by the 1 Edw. VI. c. 1, and 1 Eliz. c. 1, that whoever reviles the sacrament of the Lord's Supper, shall be punished by fine and imprisonment; and by the 1 Eliz. c. 2, if any minister shall speak any thing in derogation of the Book of Common Prayer, he shall, if not beneficed, be imprisoned for one year for the first offence, and for life for the second; and if he be beneficed, he shall for the first offence be imprisoned six months, and forfeit a year's value of his benefice; for the second offence he shall be deprived, and suffer one year's imprisonment; and for the third, shall in like manner be deprived, and suffer imprisonment for life. And if any person whatever shall, in plays, songs, or other open words, speak any thing in derogation, depraving or despising of the said book, or shall forcibly prevent the reading of it, or cause any other service to be used in its stead, he shall forfeit, for the first offence, a hundred marks; for the second, four hundred; and for the third, shall forfeit all his goods and chattels, and suffer imprisonment for life.

NONCONFORMITY to the worship of the Church is the other, or negative branch of this offence.

Nonconformists are of two sorts: first, such as absent themselves from divine worship in the Established Church through total irreligion, and attend the service of no other persuasion. These, by different statutes, forfeit one shilling to the poor every Lord's day they so absent themselves, and £20 to the king, if they continue such default for a month together. And if they keep an inmate thus irreligiously disposed in their houses, they forfeit £10 per month: but these enactments have long become obsolete.

The second species of nonconformists are those who offend through a mistaken or perverse zeal.

By the Toleration Act, however, 1 Wm. and Mary, c. 18, no penal laws extend to Dissenters, other than Papists,* and such as deny the Trinity; provided, 1. That they take the oaths of allegiance and supremacy (or make a similar affirmation, being Quakers), and subscribe the declaration against Popery. 2. That they repair to some congregation certified to and registered in the court of the bishop or archdeacon, or at the county sessions. 3. That the doors of such meeting-houses shall be unlocked, unbarred, and unbolted.

By the 52 Geo. III. c. 155, the Acts of 13 and 14 Chas. II. c. 1, the 17 Chas. III. c. 2, and the 22 Chas. II. c. 1, relating to Dissenters, are repealed; but it is enacted, that no congregation or assembly for religious worship of Protestants (at which there shall be present more than twenty persons, besides the immediate family and servants of the person in whose house or upon whose premises such meeting, congregation, or assembly, shall be had,) shall be permitted or allowed, unless duly certified and registered in the bishop or archdeacon's court, or at the general or quarter sessions of the peace once a year. And every person who shall knowingly permit or suffer any such congregation or assembly to meet in any place occupied by him, until the same shall have been so certified, shall forfeit, for every time any such congregation or assembly shall meet, a sum not exceeding £20, nor less than 20*s*.

And every person who shall teach or preach in any congregation or assembly in any place, without the consent of the occupier thereof, shall forfeit for every such offence, any sum not exceeding £30, nor less than 40*s*.

Preachers and persons resorting to any religious assemblies duly certified under this Act, are exempted from all penalties, in the same manner as persons who have taken the oaths prescribed under the statute of 1 Wm. and Mary, intituled "An Act for Exempting their Majesties' Protestant subjects dissenting from the Church of England, from the penalties of certain laws."

The oaths and declarations prescribed by the 19 Geo. III. c. 44, intituled "An Act for the further relief of Protestant Dissenting Ministers and Schoolmasters," are

* The laws affecting the Roman Catholics having been repealed in the tenth year of George the Fourth, it is only necessary here to state, that all references to Papists, as entailing any disabilities upon them, are now obsolete, and of no avail. The law as it now politically affects the Roman Catholics, will be hereafter noticed

to be taken by all preachers, when required thereto by a magistrate, under a penalty of not more than £10, nor less than 10s. for every time they preach; but no person is required to go more than five miles for such purpose. Any person may require a justice of the peace to administer such oaths and declaration, who is required to give the parties a certificate thereof, upon their paying a fee of 2s. 6d.

Preachers and teachers having taken the oaths, and not following or being engaged in any trade or business, or other profession, occupation, or employment, for their livelihood except that of a schoolmaster, are exempted from the civil services and offices specified in the Act of 1 Wm. and Mary, and from being balloted to serve in the militia or local militia of the United Kingdom.

No meeting, assembly, or congregation, shall be had in any place with the door locked, bolted, or barred, or otherwise fastened, under the penalty of a sum not exceeding £20, nor less than 40s., to be paid by the preacher.

If any person or persons do and shall wilfully and maliciously, or contemptuously disquiet or disturb any meeting, assembly, or congregation of persons assembled for religious worship, permitted or authorised by this Act or any former Act or Acts of Parliament, or shall in any way disturb, molest, or misuse any preacher, teacher, or person officiating at such meeting, assembly, or congregation, or any person or persons there assembled, such person or persons so offending shall find two sureties to be bound by recognizance in the penal sum of £50, to answer for such offence; and, in default of such sureties, shall be committed to prison, there to remain till the next general or quarter sessions; and upon conviction of the said offence at the said general or quarter sessions, shall suffer the pain and penalty of £40.

With respect to certain offences pursued in the ecclesiastical courts in England and Ireland, in which it was found difficult to enforce process in contempt, &c. it is enacted by 2 and 3 Wm. IV. c. 93, that persons residing out of the jurisdiction of such courts, and refusing to appear, &c. the judge may certify the fact to the lord chancellor, &c. within ten days, and thereupon a writ *de contumace capiendo* shall issue, unless the offender be a peer, &c. The writ *de excommunicato*, and the proceedings thereon, shall be applied to the writ *de contumace*, 5 Eliz. c. 23; and upon the appearance or submission of the party, the judge may order him to be absolved or discharged. And (s. 2.) where persons

possessed of estates, &c. in England or Ireland, neglect to pay money ordered by the said courts, the judges may pronounce such persons contumacious, and certify the same to the lord chancellor, who shall cause the process of sequestration to issue against the estate of the party.

BLASPHEMY.

Blasphemy is generally considered an offence against the Almighty, by denying his being or providence, or by contumelious reproaches of our Saviour; or by profane scoffing at the Holy Scriptures, or exposing them to contempt and ridicule. It is punishable at common law, by fine and imprisonment. And it is said not to be lawful to publish a *correct* account of proceedings in a public court, in which matter of this kind is introduced.

Somewhat allied to this, is the offence of Cursing and Swearing. By the 19 Geo. II. c. 21, every labourer, sailor, or soldier, profanely cursing or swearing, shall forfeit 1*s.*; every other person under the degree of a gentleman, 2*s.*; and every gentleman, or person of superior rank, 5*s.* to the poor of the parish; and on the second conviction, double; and for every subsequent offence, treble the sum first forfeited; with all charges of conviction; and, in default of payment, shall be sent to the house of correction for ten days.

Besides this punishment for taking God's name in vain in common discourse, it is enacted by the same statute, that if in any stage-play, interlude, or show, the name of the Holy Trinity, or any of the persons therein, be jestingly or profanely used, the offender shall forfeit £10, one moiety to the king, and the other to the informer.

Another species of offence against God and religion is the pretence of Witchcraft, Conjuration, Enchantment, or Sorcery; against which it is enacted by the 9 Geo. II. c. 5, that any person pretending to use witchcraft, tell fortunes, or discover stolen goods by skill in the occult sciences, shall be punished with a year's imprisonment, and be liable to be fined at the discretion of the Court.

Another species of offenders in this class are all Religious Impostors. These are punishable with fine, imprisonment, and infamous corporeal punishment; but the law now seldom interferes in such matters.

SIMONY.

Simony is a corrupt presentation to an ecclesiastic a benefice for gift or reward. By the 31 Eliz. c 6, if any patron, for money or any other corrupt consideration or promise, directly or indirectly given, shall present, admit, institute, induct, instal, or collate any person to an ecclesiastical benefice or dignity, both the giver and taker shall forfeit two years' value of the benefice or dignity; one moiety to the king, and the other to any one who will sue for the same.

Also, by the same statute, if persons shall corruptly resign or exchange their benefices, both the giver and taker shall in like manner forfeit double the value of the money or other corrupt consideration. And persons who shall corruptly ordain or license any minister, or procure him to be ordained or licensed, shall incur a forfeiture of £40, and the minister himself £10, besides being incapable of holding any ecclesiastical preferment for seven years afterwards. Corrupt elections and resignations in colleges, hospitals, and other eleemosynary corporations, are also punished, by the same statute, with forfeiture of the double value, vacating the place or office, and a devolution of the right of election for that time to the crown. But the mode of evading these consequences is well known and very generally practised, more to the injury of the Church than even to the advantage of those who thus disgrace it.

SABBATH-BREAKING.

Profanation of the Lord's day is punished by the municipal law of England. By the 27 Hen. VI. c. 4, no fair or market shall be held on the principal festivals, Good Friday, or any Sunday, (except the four Sundays in harvest.) on pain of forfeiting the goods exposed to sale. And by the 1 Chas. I. c. 1, no persons shall assemble out of their own parishes, for any sport whatsoever, upon this day; nor in their parishes, shall use any bull or bear-baiting, interludes, plays, or other *unlawful* exercises or pastimes; on pain that every offender shall pay 3*s*. 4*d*. to the poor. Also, by the 29 Chas. II. c. 7, no person is allowed to *work* on the Lord's day, or use any boat or

barge, or expose any goods to sale, (except meat in public-houses, or milk at certain hours, and works of necessity or charity, on forfeiture of 5*s*. Nor shall any drover, carrier, or the like, travel upon that day, under pain of 20*s*. Goods exposed to sale upon a Sunday are forfeited to the use of the poor, except that one third may be allowed the informer. But milk may be sold before nine in the morning, and after four in the afternoon. Mackerel may also be sold on Sundays, before and after divine service.

Forty waterman are permitted to ply upon the Thames, betwixt Vauxhall and Limehouse, on Sundays. Fish carriages are also allowed to travel on Sundays, either laden or returning empty.

Persons exercising their calling on a Sunday, are only subject to one penalty; for the whole is but one offence, or one act of exercising, though continued the whole day.

Bakers are permitted to dress dinners on a Sunday, as a work of necessity. But by the 34 Geo. III. c. 61, every baker shall be subject to a penalty of 10*s*. to the use of the poor, for exercising his business in any manner as a baker, except that he may sell bread between nine o'clock in the morning and one in the afternoon; and may also, within that time, bake meat, puddings, and pies, for any person who shall carry or send the same to be baked.

By the 29 Chas. II. c. 7, no writ, process, or warrant, except in treason, felony, or breach of the peace, shall be served on a Sunday, on pain that the same shall be void; and the party serving the same shall be liable to an action for damages.

Also, by the 13 Geo. III. c. 49, no person shall, on a Sunday or Christmas-day, kill any game, or use any gun, dog, net, or engine for that purpose, on pain of forfeiting from £10 to £20, for the first offence; and from £20 to £30, for the second.

And by the 21 Geo. III. c. 49, if a house, room, or place, is opened on a Sunday for any public entertainment, or for debating upon any subject whatever, to which persons are admitted by money or tickets, the keeper of it shall forfeit £200, to any person who will prosecute; the manager or president, £100; and the receiver of the money or tickets, £50. And any person advertising such a meeting forfeits £50 for every offence.

Drunkenness is punished, by the 4 James I. c. 5, with the forfeiture of 5*s*. or the sitting two hours in the stocks; and

this penalty may be inflicted by a magistrate, if the offence be committed on any other day.

LEWDNESS.

Another offence against religion and morality is that of open and notorious lewdness, either by frequenting houses of ill-fame, which is an indictable offence, or by any grossly scandalous and public indecency; for which the punishment is by fine and imprisonment.

Having Bastard Children may also be considered in a criminal light. By the 18 Eliz. c. 3, two justices may make order for the punishment of the mother and reputed father. By 50 Geo. III. c. 51, two justices may commit the mother to the house of correction, there to be punished and set to work for not more than one year, nor less than six weeks; but the bastard must be *chargeable;* and even then, two justices in petty sessions may discharge her at the end of six weeks, on good behaviour and promise of amendment.

BUYING AND SELLING WIVES,

Is deemed an offence against public morals, and punishable as a misdemeanor, with fine and imprisonment. In a case where a person assigned his wife to another, Lord Mansfield directed a prosecution, but we are not aware the case was ever tried. But an information was once granted in the King's Bench against some persons who assigned a young girl under the pretence of learning music, but in reality for prostitution.

OFFENCES AGAINST THE LAW OF NATIONS.

Offences against the law of nations are of three kinds: —1. Violation of safe-conducts; 2. Infringement of the rights of ambassadors; and, 3. Piracy.

VIOLATION OF SAFE-CONDUCTS, OR PASSPORTS.

By the 31 Hen. VI. c. 4, it is enacted, that if any of the king's subjects attempt or offend, upon the sea, or in any

port within the king's obeisance, against any stranger in amity, league, or truce, or under safe-conduct; or especially by attacking his person, or spoiling him, or robbing him of his goods; the lord chancellor, with any of the justices of either the King's Bench or Common Pleas, may cause full restitution and amends to be made to the party injured

INFRINGEMENT OF THE RIGHTS OF AMBASSADORS.

By the 7 Anne, c. 12, all process whereby the person of any ambassador, or his domestic, or domestic servant, may be arrested, or his goods distrained or seized, shall be utterly null and void; and all persons prosecuting, soliciting, or executing such process, being convicted, by confession, or the oath of one witness, before the lord chancellor and the chief justices, or any two of them, shall be deemed violators of the law of nations, and disturbers of the public repose, and shall suffer such penalties and corporal punishment as the said judges, or any two of them, shall think fit. But a *resident* merchant, who acts as consul to a foreign prince, is *not* a public minister entitled to the privileges of an ambassador.

PIRACY.

The offence of piracy, by common law, consists in committing those acts of robbery and depredation upon the high seas, which if committed upon land would have amounted to felony there. But, by statute, some other offences are made piracy also; as by the 11 and 12 Wm. III. c. 7, if any natural-born subject commit any act of hostility upon the high seas against other of his majesty's subjects, under colour of commission from any foreign power; this, though it would only be an act of war in an alien, shall be construed piracy in a subject. And further, any commander or other seafaring person, betraying his trust, and running away with any ship, boat, ordnance, ammunition, or goods, or yielding them up voluntarily to a pirate, or conspiring to do these acts; or any person assaulting the commander of a vessel, to hinder him from fighting in defence of his ship, or confining him, or making, or endeavouring to make a revolt on board; shall be adjudged a pirate, felon and robber, and shall suffer death, whether

he be principal, or merely accessory, by setting forth such pirates, or abetting them before the fact, or receiving or concealing them or their goods after it.

By the 8 Geo. I. c. 24, the trading with known pirates, or furnishing them with stores or ammunition, or fitting out any vessel for that purpose, or in anywise consulting, combining, confederating, or corresponding with them; or the forcibly boarding any merchant vessel, though without seizing or carrying her off, and destroying or throwing any of the goods overboard, shall be deemed piracy; and such accessories to piracy as are described by the statute of King William, are declared to be principal parties; and all parties convicted by virtue of this Act, are made felons without benefit of clergy.

By the same statute also, (to encourage the defence of merchant vessels against pirates,) the commanders or seamen wounded, and the widows of such seamen as are slain, in any piratical engagement, shall be entitled to a bounty, to be divided among them, not exceeding one-fifteenth part of the value of the cargo on board; and such wounded seamen shall be entitled to the pension of Greenwich Hospital. And if the commander shall behave cowardly, by not defending the ship, if she carry guns or arms, or shall discharge the mariners from fighting, so that the ship fall into the hands of pirates, such commander shall forfeit all his wages, and suffer six months' imprisonment.

By the 18 Geo. II c. 30, any natural-born subject or denizen, who in time of war shall commit hostilities at sea against any of his fellow-subjects, or shall assist an enemy on that element, is liable to be tried and convicted as a pirate.

By the 5 Geo. IV. c. 113, sec. 9, if any subject of his majesty, or any person within any of the dominions, forts, settlements, factories, or territories in his majesty's possession, or under the government of the East India Company, shall (except in such cases as are by this Act permitted.) after the first of January, 1825, upon the high seas, or in any haven, river, creek, or place where the admiral has jurisdiction, knowingly and wilfully carry away, convey, or remove, or aid and assist in so doing, any person or persons as a slave or slaves, or for the purpose of being imported as slaves into any island, colony, country, territory, or place whatsoever, or of being sold, transferred, used, or dealt with as slaves, or shall ship, embark, receive, detain, or confine, or assist in so doing, on board any ship, vessel, or boat, any person or persons for the purpose of their being carried

away, or removed as slaves, or of being imported as slaves into any place whatsoever, or of being sold, transferred, used, or dealt with as slaves, the person or persons so offending shall be deemed guilty of piracy, felony, and robbery, and shall suffer death, and loss of lands, goods, and chattels.

By 6 Geo. IV. c. 49, officers, seamen, marines, and others actually on board any king's ship at the taking or destroying any piratical vessel, shall receive £20 for each pirate taken, or killed during the attack; and £5 for every other man of the crew not taken or killed, who shall have been alive on board the pirate ship at the beginning of the engagement.

OF HIGH TREASON.

TREASON is understood to be an offence committed against the security of the king and kingdom; in which there are no accessories, but all concerned are principals.

The 25 Edw. III. has accurately defined the crime of high treason, which was, before the passing of that Act, very uncertain in its construction. The treasons of this statute may be considered as follows:—1. High treason against the king and queen's person. 2. Treason and levying war against the king in his realm. 3. Adhering to his enemies within the realm, or aiding them elsewhere. 4. Violating or deflowering the queen, or the king's eldest daughter, or the king's eldest son's wife. 5. Counterfeiting the king's great or privy seal, or his money. And, 6. Slaying the judges in the execution of their office.

1. *To compass or imagine the death of the king, queen, or their eldest son and heir,* is high treason; though it must be manifest by some overt act, as by providing arms to do it; consulting to levy war against him; writing letters to excite others to join therein; assembling persons in order to imprison or depose the king, or to get him into their power. And the law applies to the king in possession, without reference to title; for it is held that a king *de facto* though not *de jure,* is king within the meaning of the Act.

It hath been adjudged that such deliberate words as show a direct purpose against the king's life, amount to an

overt act of compassing or imagining the king's death. But if words are set down in writing, and kept privately in a man's closet, they are no overt act of treason, except the words are published; and on this ground it is held that the execution of Sydney was a mere judicial murder.

And it is held that he who intends by force to prescribe laws to the king, and to restrain him of his power, intends to deprive him of his crown and life. That, if a man be ignorant of the intention of those who take up arms, if he join in any action with them he is guilty of treason. And that the law judges every rebellion to be a plot against the king's life.

2. *To levy war against the king in his realm*, is high treason, both by the statute and by common law. But as, in cases of treason, there must be an overt act, a conspiracy or compassing to levy war is no overt act, unless a war be actually levied; though if a war be levied, then the conspirators are all traitors, although they are not in arms. And a conspiracy to levy war will be evidence of an overt act, for compassing the king's death; but if the charge in an indictment be for levying war only, it must be proved that a war was levied, to bring the persons under this clause of the statute.

Persons raising forces for any public end or purpose, and putting themselves in a posture of war, by choosing leaders, and resisting the constituted authorities, is high treason. And those who make an insurrection, in order to redress a public grievance, whether it be a real or pretended one, are held to levy war against the king, though they have no direct design against his person.

Where great numbers by force endeavour to remove certain persons from the king, or to lay violent hands on a privy-counsellor, or revenge themselves against a magistrate for executing his office, or to deliver men out of prison, or reform the religion of the law, to pull down all bawdy-houses, or throw down all inclosures in general; these acts will be high treason. But where a number of men rise to remove a grievance to their private interest, as to pull down a particular inclosure, &c. they are only considered as rioters.

If two or more conspire to levy war, and one of them alone raise forces, this is adjudged treason in all. And not only such as directly rebel and take up arms against the king, but also those who in a violent manner withstand his lawful authority, attempt a reformation of his government, or levy war against him; and, therefore, to hold

a fort or castle against the king's forces, or keep together armed men in great numbers, against the king's express commands, is high treason.

Where a rebellion has broken out, and persons join themselves to rebels for fear of death, and return the first opportunity, they are not guilty of this offence.

3. *To adhere to the king's enemies within his realm,* or give them aid in the realm or elsewhere, is high treason. Here, adherence may be proved by giving the king's enemies comfort or relief, or being in counsel with others to levy any seditious wars; and the delivery or surrender of any of the king's castles or forts to his enemy, within the realm* or without, for reward, is an adhering to the king's enemies, and is high treason by the statute.

It has been adjudged, that adhering to the king's enemies is an adhering against him; and such adhering to his enemies out of the realm is treason. A person beyond sea having solicited a foreign prince to invade the kingdom, was held guilty of high treason. But adherence out of the realm must be alleged in some place in England.

A person knowing that another had committed treason, and not revealing it, so that the offender might be secured, was considered guilty of high treason by the common law: but there must now be an assent to some outward act, to make concealing it treason.

4. *To violate and deflower the king's wife, or eldest daughter unmarried, or the wife of the king's eldest son.* Not only violating the queen consort is high treason, but also her yielding and consenting to it, is treason in her: but this does not extend to a queen dowager. So, likewise, violating the wife of the prince is treason only during the marriage. And the eldest daughter of the king is such a daughter as *is* eldest, not married, at the time of the violation; which will be treason, although there *was* an elder daughter than her, who died without issue.

5. *To counterfeit the king's great seal, privy seal, or his money; or bring false money into this kingdom counterfeited like the money of England, to make payment therewith, in deceit of the king and his people.*

As to counterfeiting the king's seal, it was treason by the common law. The 25 Edw. III. mentions only the great seal and privy seal; therefore the counterfeiting of the sign manual is not treason within that Act. By the 1 and 2 Phil. and Mary, c. 11, those who aid and consent to the counterfeiting of the great seal, are equally guilty with the actors.

The fixing the great seal to a patent without warrant, or erasing any thing out of a patent and adding new matter therein, or taking off the wax impressed by the great seal from one patent and fixing it to another, are not within this law.

By the 1 Mary, st. 2, c. 6, forging or counterfeiting foreign money made current here by proclamation is high treason. And as those persons that coin money without the king's authority are guilty of treason, so are those who have authority to do it, if they make it of greater alloy or less weight than they ought. In case of bringing counterfeit money into this kingdom, it must be actually counterfeited according to the likeness of English money, and is to be knowingly brought over from some foreign nation, not from any place subject to the crown of England, and must be uttered in payment.

6. *If a man slay the chancellor, treasurer, or the king's justices of the one bench or the other, justices in eyre, or justices of assize, and all other justices assigned to hear and determine, being in their places doing their office.*

As this clause of the Act only extends to the persons therein described, the barons of the exchequer do not come within its protection; but by 5 Eliz. c. 18, and 1 Wm. and Mary, c. 21, the lord keeper or commissioners of the great seal do.

By the 1 Anne, st. 3, c. 17, if any person shall endeavour to deprive or hinder any person, being the next in succession to the crown according to the Act of Settlement, from succeeding to the crown, and shall maliciously and directly attempt the same by any overt act, such offence shall be high treason. And, by the 6 Anne, c. 7, if any person shall maliciously, advisedly, and directly, by writing or printing, maintain and affirm that any other person hath any right or title to the crown of this realm, otherwise than according to the Act of Settlement; or that the kings of this realm, with the authority of Parliament, are not able to make laws and statutes to bind the crown, and the descent thereof; such persons shall be guilty of high treason.

By the 36 Geo. III. c. 7, if any person, during the life of his majesty, and until the end of the next session of Parliament after a demise of the crown, shall compass, imagine, invent, devise, or intend death and destruction, or any bodily harm tending to destruction, maim or wounding, imprisonment or restraint, of the king, his heirs and successors, or to depose him or them, or to levy war in order to compel a change of measures or counsels, or in

order to put any force or constraint upon, or to intimidate or overawe either house of Parliament, or to move or stir any foreigner or stranger with force to invade this realm, or any other of his majesty's dominions; and such compassing, &c. shall express by publishing any printing or writing, or by any overt act or deed, such person shall be adjudged to be a traitor, and shall suffer death.

In cases of high treason, whereby corruption of blood may ensue (except treason in counterfeiting the king's coin or seals, or misprision of such treason), it is enacted by the 7 Wm. III. c. 3, first, that no person shall be tried for any such treason, except an attempt to assassinate the king, unless the indictment be found within three years after the offence committed.

And by 7 Anne, c. 21, all persons indicted for high treason or misprision of treason shall have, not only a copy of the indictment, but a list of all the witnesses to be produced, and of the jurors impannelled, with their professions and places of abode, delivered to him ten days before the trial,* and in the presence of two witnesses, the better to prepare him to make his challenges and defence.

By the 6 Geo. IV. c. 50, sec. 21, when any person is indicted for high treason or misprision of treason, in any other court than the Court of King's Bench, a list of the petit jury, mentioning the names, professions, and place of abode of the jurors, shall be given at the same time that the copy of the indictment is delivered to the party indicted, which shall be ten days before the arraignment, and in the presence of two or more credible witnesses; and when any person is indicted for high treason or misprision of treason in the Court of King's Bench, a copy of the indictment shall be delivered within the time and in the manner aforesaid; but the list of the petit jury may be delivered to the party indicted at any time after the arraignment, so as the same be delivered ten days before the day of trial.

By the 39 and 40 Geo. III. c. 93, in all cases of high treason, in compassing or imagining the death of the king, or in misprision of such treason, where the overt act of such treason shall be alleged in the indictment to be the assassinating of the king, or a direct attempt against his life or person, the person accused shall be indicted and tried in the same manner in every respect, and upon the

* It is the practice to deliver a copy of the indictment, and the lists of witnesses and jurors, ten clear days, exclusive of the day of delivery and the day of trial, and of intervening Sundays, previous to the trial.

like evidence, as if he was charged with murder. But the judgment and execution shall remain the same as in other cases of high treason. The sentence is, drawing on a hurdle, hanging by the neck till dead, beheading and quartering;—but, after judgment, the king may direct by warrant that the traitor shall not be drawn, nor hanged, but be beheaded alive; and the warrant may direct how the body shall be disposed of.

Before the 3 Geo. III. c. 48, women, for every species of treason were sentenced to be burned alive; they are now only drawn to the place of execution and hanged.

All persons charged with the crime of high treason shall have two counsel allowed them by the court; and the same privilege is allowed them upon an impeachment by the House of Commons: and they cannot be arraigned but upon the oath of two witnesses, either both to the same overt act, or one of them to one, and the other to another overt act of the same treason.

OF FELONIES AGAINST THE ROYAL PREROGATIVE.

Felony, in general, signifies every species of crime which occasioned, at common law, the forfeiture of goods and lands. We shall first consider those immediately injurious to the royal prerogative.

These are, 1. Offences relative to the coin, not amounting to high treason. 2. Offences against the privy council. 3. The offence of serving foreign states. 4. The embezzling or destroying the king's armour or warlike stores. 5. Desertion from the army or navy, in time of war. And 6. The seduction of soldiers or sailors, and the administering or taking unlawful oaths.

OFFENCES RELATIVE TO THE COIN.

By 2 Wm. IV. c. 34, the coin laws were consolidated, and the offences against them classified as follows:—

Counterfeiting gold or silver coin, transportation for life, or not less than seven years, or imprisonment not exceeding

four years. The offence deemed complete, although the counterfeiting is unfinished.

Colouring or gilding counterfeit coin, or metal, with intent to pass them for gold or silver coin, colouring or altering copper coin, to make it pass for higher coin; transportation for life, or not less than seven years, or imprisonment not exceeding four years.

Impairing, diminishing, or lightening the gold and silver coin, with intent to make it pass for current coin, transportation for not exceeding fourteen, nor less than seven years, or imprisonment not exceeding three years.

Buying or selling, receiving or paying, or offering counterfeit gold or silver coin for lower than its denominated value, or importing counterfeit coin from beyond seas, transportation for life, or not less than seven years, or imprisonment not exceeding four years.

Knowingly tendering or uttering counterfeit gold or silver coin, imprisonment for not exceeding one year. The same offence, accompanied with the possession of *other* counterfeit coin, or followed by a second uttering within *ten days*, imprisonment not exceeding two years. And on a second conviction, transportation for life, or not less than seven years, or imprisonment not exceeding four years.

Having three or more counterfeit pieces of gold or silver coin in possession, with intent to utter the same, imprisonment not exceeding three years. On a second conviction, transportation for life, or not less than seven years, or imprisonment not exceeding four years.

Knowingly and without lawful excuse (the proof of innocence resting on the party accused) making, mending, possessing, buying, or selling any coining tools, or conveying tools or bullion out of the mint, transportation for life, or not less than seven years, or imprisonment not exceeding four years.

Counterfeiting any *copper coin*, or making, mending, or possessing any coining tool; or buying, or selling, &c. any copper coin for less than its denominated value, transportation not exceeding seven, or imprisonment not exceeding two years. And uttering counterfeit copper coin, or having in possession three or more pieces, imprisonment for not more than one year.

Gold or silver coin suspected to be fraudulently diminished, or counterfeit, may be cut or defaced by persons to whom it may be tendered, and if it prove so, the tenderer to bear the loss: but if otherwise, the person

defacing, &c. must receive it at the rate it was coined at. Disputes to be settled by a magistrate. Tellers of the exchequer, receivers general, &c. to break all counterfeit coin.

Persons discovering counterfeit coin, or coining tools, to take the same to a magistrate; who, on reasonable suspicion, may cause the place of a suspected person to be searched either by day or night, and seize any coin or tool found, to be detained as evidence, and delivered afterwards to the Mint.

Any credible witness may prove coin to be counterfeit.

Hard labour or solitary confinement may be added to imprisonment. The King's coin means any coin lawfully current; and wilfully having possession in *any place*, for his own use or benefit, or that of another, is possession within the meaning of the Act.

OFFENCES AGAINST THE PRIVY COUNCIL.

By 3 Hen. VII. c. 14, any sworn servant of the king's household who conspires or confederates to kill any lord of the realm, or other person sworn of the king's council, is guilty of felony.

And by the 9 Anne, c. 16, to assault, strike, wound, or attempt to kill, any privy counsellor in the execution of his office, is felony.

SERVING FOREIGN STATES.

By 59 Geo. III. c. 69, if any natural-born subject of his majesty shall take or accept any commission, or shall otherwise enter into the naval or military service of any foreign state, or of any person exercising or assuming to exercise the powers of government in any foreign country without the licence of his majesty under the sign-manual, or signified by order of council, or by royal proclamation; or if any person whatever, within the dominions of Great Britain, shall hire, or attempt or endeavour to hire, retain, engage, or procure, any person or persons to enlist in the service of any power or powers, &c. as aforesaid; every person so offending shall be deemed guilty of a misdemeanor, and shall be punished by fine and imprisonment, at the discretion of the Court. It is however expected that

this Act, commonly called the Foreign Enlistment Act, will be repealed, as the provisions are not now much regarded. It was recently suspended by proclamation, to enable British subjects to enter into the service of the Queen of Spain, and has not been restored to effect.

The officers of the customs are empowered to detain vessels in any port of her majesty's dominions, having persons on board destined for such services. And any person having the command of any ship with persons engaged as aforesaid, with his knowledge and consent, shall forfeit £50 for each.

Any person fitting out and equipping any vessel without licence of her majesty, for the service of any power or powers as aforesaid, is declared guilty of a misdemeanor; and the ship, with all her stores, tackle, &c. is forfeited.

If any ship or vessel in the service of any of the powers, states, &c. aforesaid, shall be assisted by any person or persons in the dominions of Great Britain, without the licence of her majesty, by adding to the number of guns, or by the addition of any equipment of war, such person or persons so offending are declared guilty of a misdemeanor, and are liable to fine and imprisonment.

EMBEZZLING OR DESTROYING THE QUEEN'S ARMOUR OR WARLIKE STORES.

By 12 Geo. III. c. 24, to set on fire, burn, or destroy any of her majesty's ships of war, whether built, building, or repairing; or any of the king's arsenals, magazines, dock-yards, rope-yards, or victualling offices, or materials thereunto belonging; or military, naval, or victualling stores or ammunition; or causing, aiding, procuring, abetting, or assisting in such offence, is felony.

By 39 and 40 Geo. III. c. 89, persons who are not contractors, receiving or having stores of war in their possession, may be transported for fourteen years, and defacing marks which denote such stores, is subject to the same punishment.

By 2 Wm. IV. c. 4, persons employed in the public service of her majesty, and entrusted with any chattels, money, or valuable security, who embezzle the same, are guilty of felony, and liable to transportation for fourteen, or not less than seven years or to imprisonment, with or without hard labour, for not exceeding three years.

DESERTION FROM THE ARMY OR NAVY.

Desertion in time of war, whether by land or sea, in England, or in parts beyond the seas, is (exclusive of the annual Acts of Parliament for punishing mutiny and desertion,) by the 18 Hen. VI. c. 19, and 5 Eliz. c. 5, felony, and the offence was made triable by the justices of every shire, but is now generally punished under the Articles of War, and by a court-martial.

SEDUCTION OF SOLDIERS OR SAILORS, AND ADMINISTERING OR TAKING UNLAWFUL OATHS.

By the 37 Geo. III. c. 70, if any person shall maliciously and advisedly endeavour to seduce any person serving in his majesty's service by sea or land from his duty and allegiance, or to incite any person to commit any act of mutiny or mutinous practice, he shall be guilty of felony, and shall suffer death. The crime, wherever committed, may be tried in any county.

And by the 37 Geo. III. c. 123, it is enacted, that whoever shall administer, or cause to be administered, or shall be present at and consenting to the administering of, or shall take, any oath or engagement intended to bind any person to any mutinous or seditious purpose, or to belong to any seditious society or confederacy, or to obey any committee, or any person not having legal authority for that purpose, or not to give evidence against any confederate or other person, or not to discover any unlawful combination, or any illegal act, or any illegal oath or engagement, shall be guilty of felony, and may be transported for seven years. Compulsion shall be no excuse, unless the party, within four days after he has an opportunity, disclose the whole of the case to a justice of the peace, or if a seaman or soldier, to his commanding officer. An offence against this Act, committed any where, may be tried in any county; unless it be committed in Scotland, when it shall be tried in the criminal courts of that country.

A person acquitted under either of these statutes, shall not be prosecuted again for the same fact for high treason; but these statutes shall not prevent any person not already tried under them from being prosecuted for high treason, in the same manner as if they had not been passed.

OF PRÆMUNIRE.

PRÆMUNIRE was an offence whereby the Papal authority was encouraged and promoted, in diminution of that of the crown. It derives its name from the word *præmunire, to forewarn,* in the writ by which the punishment was inflicted; and various statutes, now obsolete, were passed to discourage it, from the reign of Edward the Third to Elizabeth; since when, the penalties of *præmunire* have been applied to offences which have little or no relation to that from whence the name is derived. Thus, to molest the possessors of abbey lands granted by Parliament to Henry VIII. and Edward VI. is a *præmunire*; and likewise, the offence of acting as a broker or agent in any usurious contract, when above ten per cent. interest is taken.

To obtain any stay of proceedings, other than by arrest of judgment or writ of error, in any suit for a monopoly, is likewise a *præmunire;* and, also, to obtain an exclusive patent for the sole making or importation of gunpowder or arms, or to hinder others from importing them, is also a *præmunire.*

To assert, maliciously and advisedly, by speaking or writing, that both or either house of Parliament have a legislative authority without the king, is declared a *præmunire.*

And by the act of *habeas corpus* also, it is a *præmunire,* and incapable of the king's pardon, besides other heavy penalties, to send any subject of his realm a prisoner into parts beyond the seas.

By the 1 Wm. and Mary, st. 1, c. 8, persons of eighteen years of age refusing to take the new oaths of allegiance as well as supremacy, upon tender by the proper magistrate, were subject to the penalties of a *præmunire*: and, by 7 and 8 Wm. III. c. 24, serjeants, counsellors, proctors, attorneys, and all officers of courts, practising without having taken the oaths of allegiance and supremacy, and subscribed the declaration against Popery, are guilty of a *præmunire,* whether the oaths be tendered or not.

By the 6 Anne, c. 23, if the assembly of peers of Scotland, convened to elect their sixteen representatives in the British Parliament, shall presume to treat of any other matter, save only the election, they incur the penalties of *præmunire.*

The 12 Geo. III. c. 11, subjects to the penalties of the

statute of *præmunire* all such as knowingly and wilfully solemnise, assist, or are present at, any forbidden marriage of such of the descendants of the body of king George II. as are by that Act prohibited to contract matrimony without the consent of the crown.

The *punishment* for *præmunire* is, that from the conviction, the defendant shall be out of the king's protection, and his lands and tenements, goods and chattels, forfeited to the king; and that his body shall remain in prison at the king's pleasure; but, to obviate a savage notion, that it was lawful to kill any one convicted of *præmunire*, the 5 Eliz. c. 1, provides, that it shall not be lawful to kill any person attainted of a *præmunire;* any law, statute, opinion, or exposition of law, to the contrary notwithstanding. But still such delinquent can bring no action for any private injury, how atrocious soever, being so far out of the protection of the law, that it will not guard his civil rights, nor remedy any grievance which he as an individual may suffer.

OF MISPRISIONS AND CONTEMPTS.

Misprisions are generally understood to be all such high offences as are under the degree of capital, but nearly bordering thereon, and are generally divided into two sorts: *negative*, or the *concealment* of something which ought to be revealed; and *positive*, or the *commission* of something which ought not to be done.

Of the first kind, is Misprision of Treason; which consists in the bare knowledge and concealment of treason, without any degree of assent thereto; but the concealment becomes criminal, if the party do not, as soon as conveniently may be, reveal it to some judge of assize, or justice of the peace; and any *probable* circumstances of assent, as going to a treasonable meeting, knowing that a conspiracy is intended against the king, or being in company by accident, and having heard such conspiracy, meet the same company again, and hear more, but conceal it, creates an implied assent in law, and makes the concealer guilty of high treason.

Misprision of Felony is the concealment of a felony which a man knows, but never assented to; and the punishment of this, in a public officer, is imprisonment for a

year and a day; in a common person, imprisonment for a less time; and in both, fine and ransom at the king's pleasure.

Another species of negative misprision is, the *concealment of treasure found*, which belongs to the king or his grantees by prerogative royal; the concealment of which was formerly punishable by death, but now only by fine and imprisonment.

Misprisions which are *positive*, are generally denominated CONTEMPTS, or HIGH MISDEMEANORS; of which

The first and principal is the *mal-administration of public offices*. Hitherto also may be referred the offence of *embezzling the public money*. This is not a capital crime, but subjects the committer of it to a discretionary fine and imprisonment.

Other misprisions are contempts against the *royal prerogative;* as, by refusing to assist him for the good of the public; either in his councils, by advice, if called upon; or in his wars, by personal service for defence of the realm, against a rebellion or invasion. Under this class may be ranked the neglecting to join the *posse comitatus*, or power of the county. Contempts against the prerogative may also be, by preferring the interests of a foreign potentate to those of our own, or doing or receiving any thing that may create an undue influence in favour of such extrinsic power; as by taking a pension from any foreign prince without the consent of the king. Or, by disobeying the king's lawful commands, whether by writs issuing out of his courts of justice, or by a summons to attend his privy council, or by letters from the king to a subject commanding him to return from beyond the seas, (for disobedience to which his lands shall be seized till he does return, and himself afterwards punished,) or by his writ of *ne exeat regno*, or proclamation commanding the subject to stay at home. Disobedience to any of these commands is a high misprision and contempt: and so also is disobedience to any Act of Parliament, where *no particular penalty* is assigned; for then it is punishable, like the rest of these contempts, by fine and imprisonment, at the discretion of the king's courts of justice.

Contempts and misprisions against the *king's person and government* may be by speaking or writing against them, cursing or wishing him ill, giving out scandalous stories concerning him, or doing any thing that may tend to lessen him in the esteem of his subjects, may weaken his government, or may raise jealousies between him and his people.

It has also been held an offence of this species to drink to the pious memory of a traitor; or for a clergyman to absolve persons at the gallows, who there persist in the treasons for which they die. And for this species of contempt a man may not only be fined and imprisoned, but suffer also corporal punishment.

Contempts against the *king's title*, not amounting to treason or *præmunire* are, the denial of his right to the crown, in common and unadvised discourse (for if it be by advisedly speaking, it amounts to a *præmunire*). This heedless species of contempt is punished with fine and imprisonment.

And if any person shall affirm or maintain that the common laws of this realm, not altered by Parliament, ought not to direct the right to the crown; this is a misdemeanor by the 13 Eliz. c. 1, and punishable with forfeiture of goods and chattels.

A contempt may also arise from neglecting to take the oaths appointed by statute for the better securing the government, and yet acting in a public office, place of trust, or other capacity, for which the said oaths are required to be taken, *viz.* those of allegiance, supremacy, and abjuration, which must be taken within six calender months after admission. The penalties for this contempt inflicted by the 1 Geo. I. st. 2, c. 13, are very little, if any thing, short of a *præmunire;* being incapacity to hold the said office or any other, to prosecute any suit, to be guardian or executor, to take any legacy or deed of gift, or to vote at an election for members of Parliament; and after conviction, the offender shall also forfeit £500 to him that will sue for the same.

Members on the foundation of any college in the two Universities, who by this statute are bound to take the oaths, must also register a certificate thereof in the college registry, within one month after; otherwise, if the electors do not remove him, and elect another within twelve months, the king may nominate a person to succeed him. Besides thus taking the oaths for offices, any two justices of the peace might summon and tender the oaths to any person whom they shall suspect to be disaffected; and every person refusing the same, properly called a nonjurer, was adjudged a Popish recusant convict: but the recent statutes in favour of the Catholics, and the repeal of the test and corporation acts as affecting dissenters, render this practice obsolete, and of no effect.

Contempts against the *king's palaces or courts of justice*

are high misprisions. By the 33 Hen. VIII. c. 12, maliciously striking in the king's palace, wherein his royal person resides, whereby blood is drawn, is punished by perpetual imprisonment, fine at the king's pleasure, and loss of the offender's right hand.

But striking in the king's superior courts of justice, in Westminster Hall, or at the assizes, is made still more penal than even in the king's palace. A stroke or blow in a court of justice, whether blood be drawn or not, or even assaulting a judge sitting in the court, by drawing a weapon, without any blow struck, is punishable with the loss of the right hand, imprisonment for life, forfeiture of goods and chattels, and of the profits of his lands during life. Also, the rescue of a prisoner from any of the said courts, without striking a blow, is punished with perpetual imprisonment and forfeiture of goods, and of the profits of land during life.

Not only actual violence, but threatening or reproachful words to any judge sitting in the courts are a high misprision, and have been punished with large fines, imprisonment, and corporal punishment. Even in the inferior courts, an affray, or contemptuous behaviour, is punishable with a fine by the judges there sitting; as by the steward in a court-leet, or the like.

If a man assault or threaten his adversary for suing him, a counsellor or attorney for being employed against him, a juror for his verdict, or a gaoler or other ministerial officer for keeping him in custody, and properly executing his duty, he is liable to punishment by fine and imprisonment.

Lastly, to endeavour to dissuade a witness from giving evidence, to disclose an examination before the privy council, (all of which are impediments of justice,) are high misprisions and contempts of the king's courts, and punishable with fine and imprisonment.

OFFENCES AGAINST PUBLIC JUSTICE.

Embezzling or Vacating Records.—By the 7 and 8 Geo. IV. c. 29, sec. 21, if any person shall steal, or shall for any fraudulent purpose take from its place of deposit for the time being, or from any person having the lawful

custody thereof, or shall unlawfully and maliciously obliterate, injure, or destroy any legal document, or fraudulently conceal or destroy any will or codicil, or steal the writings or evidence of titles to real estates, such offender is guilty of a misdemeanor, and shall be liable to be transported for seven years, or such other punishment, by fine, imprisonment, or both, as the Court shall award. And by 5 George IV. c. 20, persons in the post-office embezzling or destroying parliamentary proceedings. &c. sent by post, are punishable with fine and imprisonment.

Abuses by Gaolers.—By 14 Edward III. c. 10, if any gaoler, by too great duress of imprisonment, make any prisoner that he hath in ward become an *approver* or *appellor* against his will, that is, to accuse and turn evidence against some other person, it is felony in the gaoler.

Escape.—If a man arrested upon a criminal process afterwards elude the vigilance of his keepers, before he is put in hold, it is an offence against public justice, and the party is punishable by fine or imprisonment. Officers who, after arrest, *negligently* permit a felon to escape, are also punishable by fine; but *voluntary* escapes, by consent and connivance of the officer, are a much more serious offence; and are punishable in the same degree, as the offence of which the prisoner is guilty, and for which he is in custody, whether treason, felony, or trespass; and this, whether he were actually committed to gaol, or only under a bare arrest. The officer, however. cannot be thus punished, till the felon have actually received judgment, or been attainted upon verdict, confession, or outlawry, of the crime for which he was so committed or arrested; but, before the conviction of the offender, the officer may be fined and imprisoned for misdemeanor.

Rescue is the forcibly and knowingly freeing another from an arrest or imprisonment; and it is generally the same offence in the stranger so rescuing, as it would have been in a gaoler to have *voluntarily* permitted an escape. A rescue, therefore, of one apprehended for felony, is felony; for treason, treason; and for a misdemeanor, a misdemeanor also; but, as upon voluntary escapes, the principal must first be attainted, or receive judgment, before the rescuer can be punished.

Obstructing the execution of lawful process is an offence against public justice; and it hath been held that the party opposing an arrest becomes thereby *particeps criminis,* that is, an accessary in felony, and a principal in high treason.

Returning from Transportation.—The returning from transportation, or being seen at large in Great Britain, before the expiration of the term for which the felon was ordered to be transported, or had agreed to transport himself, is a capital felony, though rarely carried into effect; as is also the assisting them to escape from such as are conveying them to the port of transportation.

Taking a Reward for Stolen Goods.—Persons who corruptly take any money or reward, under pretence of helping any person to property stolen, &c. are (unless they cause the offender to be apprehended and brought to trial for the same,) guilty of felony, and liable to be transported for life, or for any term not less than seven years, or to be imprisoned for any term not exceeding four years, and, if a male, to be once, twice, or thrice publicly or privately whipped (if the Court shall so think fit) in addition to such imprisonment. 7 and 8 George IV. c. 29, sec. 58.

Advertising Reward for Return of Stolen Property.—Persons who publicly advertise a reward for the return of any property stolen, and use any words purporting that no questions will be asked, or that a reward will be given for such property, without seizing or making any inquiry after the person producing such property, or shall promise to return to any person who may have bought or advanced money upon such property, the money so advanced, or any other reward for the return of such property, and persons who print or publish any such advertisement, shall forfeit £50 for every such offence, to any person who will sue for the same by action of debt, to be recovered with full costs of suit.

And where the stealing or taking of any property is punishable on summary conviction, either for every offence, or for the first and second offence only, or for the first offence only, any person who shall receive any such property, knowing the same to be unlawfully come by, shall, on conviction thereof before a justice of the peace, be liable, for every first, second, or subsequent offence of receiving, to the same forfeiture and punishment to which a person guilty of a first, second, or subsequent offence of stealing or taking such property, is made liable.

Receiving Stolen Goods, knowing them to be Stolen.—Persons who receive any property whatsoever, the stealing whereof amounts to felony, and knowing the same to have been feloniously stolen, are guilty of felony, and may be indicted and convicted either as accessaries after the fact, or for a substantive felony; and, in the latter case,

whether the principal felon shall or shall not have been previously convicted, or shall or shall not be amenable to justice; and every such receiver, howsoever convicted, shall be liable to be transported for fourteen years, or to be imprisoned for three years, and, if a male, to be once, twice, or thrice publicly or privately whipped; but no person, tried for receiving as aforesaid, is liable to be prosecuted a second time for the same offence.

If any person shall receive any property whatsoever, the stealing or converting whereof is made an indictable misdemeanor, every such person knowing the same to have been unlawfully obtained, is guilty of a misdemeanor, and may be indicted and convicted thereof, whether the person guilty of the principal misdemeanor, shall or shall not have been previously convicted thereof, or shall or shall not be amenable to justice; and every such receiver shall, on conviction, be liable to be transported for seven years, or imprisoned for two years, and, if a male, to be once, twice, or thrice publicly or privately whipped in addition.

If any person shall receive any property, knowing the same to have been feloniously obtained, every such person, whether charged as an ascessary after the fact, or with a substantive felony, or with a misdemeanor only, may be dealt with, indicted, tried, and punished, in any county or place in which he shall have, or shall have had any such property in his possession, or in any county or place in which the party guilty of the principal felony or misdemeanor may by law be tried, in the same manner as such receiver may be dealt with, indicted, tried, and punished in the county or place where he actually received such property.

If any person guilty of any such felony or misdemeanor in stealing, taking, obtaining, or converting, or in knowingly receiving any chattel, money, valuable security, or other property whatsoever, shall be indicted for any such offence, by or on the behalf of the owner of the property, or his executor or administrator, and convicted thereof, in such case the property shall be restored to the owner or his representative; and the Court, before whom any such person shall be so convicted, shall have power to award from time to time writs of restitution for the said property, or to order the restitution thereof in a summary manner: provided, that if it shall appear, before any award or order, that any valuable security shall have been *bonâ fide* paid or discharged by some person or body corporate liable to the payment thereof, or, being a negotiable instrument,

shall have been *boná fide* taken or received, by transfer or delivery, by some person or body corporate, for a just and valuable consideration, without any notice, or without any reasonable cause to suspect that the same had been stolen, taken, obtained, or converted, as aforesaid, in such case the Court shall not award or order the restitution.

In the case of every felony, every principal in the second degree, and every accessary before the fact, shall be punishable with death or otherwise, in the same manner as the principal in the first degree; and every accessary after the fact (except only a receiver of stolen property,) shall, on conviction, be liable to be imprisoned for any term not exceeding two years; and every person who shall aid, abet, counsel, or procure the commission of any misdemeanor, shall be liable to be indicted and punished as a principal offender.

Common Barretry.—Common barretry is the offence of frequently exciting and stirring up suits and quarrels between his majesty's subjects, either at law or otherwise. The punishment of this offence, in a common person, is by fine and imprisonment; and by 12 George I. c. 29, if any one, who hath been convicted of forgery, perjury, subornation of perjury, or common barretry, shall practise as attorney, solicitor, or agent in any suit, the Court, upon complaint, shall examine it in a summary way, and, if proved, shall direct the offender to be transported for seven years.

To this head may be referred another offence, of equal malignity, that of suing another in the name of a fictitious plaintiff, either one not in being at all, or one who is ignorant of the suit. This offence, if committed in any of the king's superior courts, is left, as a high contempt, to be punished at their discretion. But in the courts of a lower degree, where the crime is equally pernicious, but the authority of the judges not equally extensive, it is directed, by the 8 Elizabeth c. 2, to be punished by six months' imprisonment, and treble damages to the party injured.

To acknowledge any fine, recovery, deed enrolled, statute, recognizance, bail, or judgment, in the name of another person not privy to the same, is felony; and to personate any other person as bail before any judge of assize, or other commissioner authorised to take bail in the country, is also felony.

Maintainance—is an officious intermeddling in a suit that no way belongs to one, by maintaining or assisting

either party with money, or otherwise, to prosecute or defend it. This is an offence against public justice, as it keeps alive strife and contention, and perverts the remedial process of the law into an engine of oppression. A man may, however, maintain the suit of his near kinsman, servant, or poor neighbour, out of charity and compassion, with impunity. Otherwise, the punishment by common law is fine and imprisonment, and by the 32 Henry VIII. a forfeiture of ten pounds.

Champerty is a species of maintainance, and punished in the same manner; being a bargain with a plaintiff or defendant to divide the land or other matter sued for between them, if they prevail at law, whereupon the *champertor* is to carry on the party's suit at his own expense.

The 32 Henry VIII. c. 9, enacts, that no one shall sell or purchase any pretended right or title to land, unless the vendor have received the profits thereof, for one whole year before such grant, or have been in actual possession of the land, or of the reversion or remainder, upon pain that both purchaser and vendor shall each forfeit the value of such land to the king and the prosecutor.

Compounding of Informations.—By 18 Elizabeth c. 5, if any person informing under pretence of any penal law make any composition, without leave of the Court, *or take any money or promise from the defendant to excuse him*, he shall be liable to fine and imprisonment, and shall be for ever disabled to sue on any popular or penal statute.

But it is no offence to compound a misdemeanor; for in case of a misdemeanor, the person injured may maintain an action to recover a compensation in damages.

Conspiracies.—A conspiracy is where two or more persons agree to indict an innocent man of felony falsely and maliciously, who is accordingly indicted and acquitted; here the party injured may either have a civil action by writ of conspiracy, or the conspirators may be indicted at the suit of the king, which subjects them to fine and imprisonment. And any agreement, with overt acts to carry into effect any such agreement on the part of *two* or more persons, to do any injury to other parties, or to affect public health, or to do any thing thing illegal, is indictable under the rather indefinite term of conspiracy.

Perjury, and Subornation of Perjury.—*Perjury* is a crime committed by wilful false swearing in a court of justice, or before any person of authority to administer it.

Subornation of perjury is the procuring another to take such a false oath as constitutes perjury in the principal.

The punishment of perjury and subornation is by fine and imprisonment, and never more to be capable of bearing testimony. The 5 Elizabeth c. 9, inflicted the penalty of perpetual infamy, and a fine of £40 on the suborner; and, in default of payment, imprisonment for six months, and to stand with both ears nailed to the pillory; and although the punishment of the pillory is abolished in all other cases, by 58 George III. c. 138, it is still retained as a legal punishment for perjury; but the prosecution is usually carried on for the offence at common law; especially as, to the penalties before inflicted, the 2 George II. c. 35, superadds a power for the Court to order the defendant to be sent to the house of correction for a term not exceeding seven years, or to be transported for the same period, and makes it felony to return or escape within the time.

To constitute perjury, the falsehood of the oath must be *wilful*, and not through unavoidable haste, inadvertency, or weakness. It must also be material to the cause in which it was committed, and evidently intended to do malicious injury to the person aggrieved.

Bribery is when a judge, or other person concerned in the administration of justice, takes any undue reward to influence his behaviour in his office. This offence is punished in inferior officers with fine and imprisonment; and in those who offer a bribe, though not taken, the same. By 11 Henry IV. all judges and officers of the king convicted of bribery shall forfeit treble the bribe, be punished at the king's will, and be discharged from the king's service for ever.

To offer money to any of the king's ministers, for the purpose of obtaining a public appointment, is held to be a misdemeanor.

Embracery is an attempt to influence a jury corruptly, by promises, persuasions, entreaties, money, entertainments, or the like. The punishment for the person so acting is by fine and imprisonment; and for the juror so embraced, if it be by taking money, perpetual infamy, imprisonment for a year, and forfeiture of the tenfold value.

Extortion is where any officer unlawfully takes, by colour of his office, from any man, any money or thing of value, that is not due to him, or more than is due, or before it is due. The punishment for this offence is fine and imprisonment, and sometimes a forfeiture of the office.

BREACHES OF THE PUBLIC PEACE.

Rioting.—By 1 George I. c. 5, commonly called the Riot Act, if any twelve persons are unlawfully assembled, to the disturbance of the peace, and any one justice of the peace, sheriff, or under-sheriff, or mayor of a town, shall command them by proclamation to disperse, and they contemn his orders, and continue together for one hour afterwards, such contempt is felony. And if the reading of the proclamation be by force opposed, or the reader be in any manner wilfully hindered from the reading of it, such opposers and hinderers are felons; and all persons to whom such proclamation *ought to have been made*, and knowing of such hinderance, and not dispersing, commit an act of felony.

By the 7 and 8 George IV. c. 30, sec. 8, persons riotously and tumultuously assembled together to the disturbance of the public peace, who demolish, pull down, or destroy, or begin so to do, any church or chapel, or any chapel for the religious worship of persons dissenting from the united church of England and Ireland duly registered, or any house, stable, coach-house, outhouse, warehouse, office, shop, mill, malt-house, hop oast, barn, or granary, or any building or erection used in carrying on any trade or manufacture, or any branch thereof, or any machinery, whether fixed or moveable, prepared for or employed in any manufacture, or in any branch thereof, or any steam engine or other engine, for sinking, draining, or working any mine, or any staith, building, or erection used in conducting the business of any mine, or any bridge, waggon-way, or trunk for conveying minerals from any mine, are guilty of felony, and shall suffer death; and the inhabitants of the hundred, &c. in which any such offences shall be committed, shall be liable to yield full compensation to the persons damnified, for the damage done, and for any damage at the same time done to any property therein.

But no action is maintainable, unless the persons damnified, or their servants who had the care of the property damaged, shall within seven days go before some justice of the peace, and state upon oath the names of the offenders, if known, and submit to his examination touching the circumstances of the offence, and become bound by recognizance to prosecute the offenders when apprehended; and no person shall be enabled to bring any such action, unless commenced within three calendar months.

Process for appearance must be served on the *high con-*

stable, who shall within seven days give notice to two justices of the peace, and shall cause to be entered an appearance in the said action, and also defend the same on behalf of the inhabitants; or he may, with the consent and approbation of the justices, suffer judgment to go by default; and no inhabitant is precluded from giving evidence either for the plaintiff or the defendant in any such action.

If the plaintiff recover judgment, the sheriff, upon receipt of the writ of execution, shall (on payment of the fee of 5*s.*) make his warrant to the treasurer of the county, riding, or division, commanding him to pay the plaintiff the sum by the writ directed; and on the high constable producing and proving before two justices an account of the expenses he has incurred, they shall make an order for payment upon the treasurer of the county. If judgment shall be given against the plaintiff, the high constable shall in like manner be reimbursed for the necessary expenses incurred, above the taxed costs to be paid by the plaintiff; and if the plaintiff is insolvent, so that the high constable can have no relief as to such taxed costs, they shall make an order upon the treasurer of the county, &c. for the payment.

No person shall commence any action against the hundred, where the damage shall not exceed £30; but the party shall, within seven days, give notice in writing to the high constable, who shall, within seven days, exhibit the same to two justices of the peace, and they shall thereupon appoint a special petty session to be holden within not less than twenty, nor more than thirty days after the exhibition of such notice, for the purpose of hearing and determining any claim which may be brought before them; and such high constable shall, within three days after such appointment, give notice in writing to the claimant, of the day, and hour, and place appointed, and shall within ten days give the like notice to all the justices acting for such hundred or district; and the claimant is required to cause a notice in writing to be placed on the church or chapel door, or other conspicuous part of the parish, &c. on two Sundays preceding the day of holding such petty session.

And the justices at such petty session may hear and examine the claimant, and any of the inhabitants of the hundred, and make an order for payment of the amount of such damage, together with costs; and also an order for payment of the costs and charges of the high constable, and direct such order to the treasurer of the county, &c. who shall pay the same to the parties.

If the high constable refuse or neglect to exhibit or give the notice required, the party damnified may sue him for the amount of the damage.

Every claim for damage caused to any church or chapel shall be brought in the name of the rector, vicar, or curate, or, in case there be none, in the names of the church or chapelwardens, and if none, in the name of any one or more of the persons in whom the property may be vested; and the amount shall be applied in the rebuilding or repairing such church or chapel; and where any of the offences shall be committed on any property belonging to a body corporate, such body may recover compensation in the same manner as any person damnified is by this Act enabled to do; provided, that the several conditions hereinbefore required to be performed by any person damnified, may, in the case of a body corporate, be performed by any officer of such body.

Where any of the offences shall be committed in a county of a city, or county of a town, or in any such liberty, franchise, city, town, or place, the inhabitants shall be liable to yield compensation in the same manner, and under the same conditions and restrictions, as the inhabitants of the hundred; and the process for appearance in the action, and the notice required in the case of the claim, shall be served upon some one peace officer of such county, liberty, franchise, city, town, or place; and all matters which the high constable of a hundred is authorised or required to do, shall be done by the peace officer so served.

And in the Cinque Ports, and in places where writs are directed to other officers than the sheriff, and in liberties where the sheriff is not warranted in executing writs, all other such officers to whom any writs of execution under this act shall be directed, shall have the same power of granting a warrant for the payment of the sum directed to be levied, as is hereby given to the sheriff; and every sheriff and other such officer shall have authority to grant his warrant, notwithstanding the offence shall have been committed in, or the treasurer or other person to whom such warrant shall be directed, shall reside or be in any liberty where the sheriff or officer is not warranted in executing writs.

This Act does not extend to Scotland or Ireland.

Routs and Unlawful Assemblies.—An *unlawful assembly* is when three or more assemble themselves to do an unlawful act; as, to pull down inclosures, to destroy a warren,

or the game therein, and part without doing it, or making any motion toward it. A *rout* is where three or more meet to do an unlawful act upon a common quarrel; as forcibly breaking down fences, upon a right claimed of common, or of way, and make some advances towards it. A *riot* is where three or more actually do an unlawful act of violence, either with or without a common cause of quarrel; as if they beat a man; or hunt and kill game in another's park, chase, warren, or liberty; or do any other unlawful act with force and violence; or even do a lawful act, as removing a nuisance in a violent and tumultuous manner.

The punishment of unlawful assemblies, if to the number of twelve, may be capital, according to the circumstances that attend it; but, from the number of three to eleven, is by fine and imprisonment only. By the 13 Henry IV., c. 7, any two justices, together with the sheriff or under-sheriff of the county, may come with the *posse comitatus* (if need be), and suppress any riot, assembly, or rout, arrest the rioters, and record upon the spot the nature and circumstances of the whole transaction; which record alone shall be a sufficient conviction of the offenders.

Destroying Locks, Bridges, Turnpike-Gates, &c.—By 7 and 8 George IV., if any person shall maliciously break or cut down any sea-bank, sea-wall, or the bank or wall of any river, canal or marsh, whereby any lands shall be overflowed or damaged, or be in danger of being so, or shall maliciously throw down, level, or otherwise destroy any lock, sluice, floodgate, or other work on any navigable river or canal, he shall be guilty of felony, and shall be liable, at the discretion of the Court, to be transported for life, or for any term not less than seven years, or to be imprisoned for any term not exceeding four years, and, if a male, to be once, twice, or thrice, publicly or privately whipped (if the Court shall so think fit), in addition to such imprisonment; and if any person shall maliciously cut off, draw up, or remove any piles, chalk, or other materials fixed in the ground and used for securing any sea-bank or sea-wall, or the bank or wall of any river, canal, or marsh, or shall maliciously open or draw up any flood-gate, or do any other injury or mischief to any navigable river or canal, with intent and so as thereby to obstruct or prevent the carrying on, completing or maintaining the navigation thereof, every such offender shall be guilty of felony, and shall be liable to be transported beyond the seas for the term of seven years, or to be imprisoned for any term not exceeding two years; and, if a male, to

be once, twice, or thrice publicly or privately whipped (if the Court shall so think fit,) in addition to such imprisonment.

And if any person shall maliciously pull down or in anywise destroy any public bridge, or do any injury with intent, and so as thereby to render such bridge, or any part thereof, dangerous or impassable, every such offender shall be guilty of felony, and shall be liable to be transported for life, or for any term not less than seven years, or to be imprisoned for any term not exceeding four years, and, if a male, to be once, twice, or thrice publicly or privately whipped, (if the Court shall so think fit.) in addition to such imprisonment.

And if any person shall maliciously throw down, level, or otherwise destroy, in whole or in part, any turnpike-gate, or any wall, chain, rail, post, bar, or other fence belonging to any turnpike-gate, or set up or erected to prevent passengers passing by without paying any toll, or any house, building, or weighing engine erected for the better collection, ascertainment, or security of any such toll, every such offender shall be guilty of a misdemeanor, and shall be punished accordingly.

Affrays.—By the 5 and 6 Edward IV. if any person shall by words only quarrel, chide, or brawl, in a church or churchyard, the ordinary shall suspend him, if a layman, from admission to the church, &c.,; and if a clerk in orders, from the ministration of his office during pleasure. And if any person in such church or churchyard proceed to smite or lay violent hands upon another, he shall be excommunicated *ipso facto*; or if he strike with a weapon, or draw a weapon with intent to strike, he shall, besides excommunication, have one of his ears cut off; or, having no ears, be branded with the letter F in his cheek.

Forcible Entry or Detainer.—By the common law, a man disseised of lands or tenements might legally regain possession by force, unless his right of entry was gone, by neglecting to enter it in proper time; but, as this often gave occasion for serious disturbances of the public peace, it was enacted that all forcible entries should be punished with imprisonment and ransom at the king's will. And upon any forcible entry, or forcible detainer after peaceable entry, into any lands or benefices of the church, one or more justices of the peace, taking sufficient power of the county, may go to the place, and there record the force npon his own view, as in case of riots; and, upon such conviction, may commit the offender to gaol, till he make fine and ransom to the king. And moreover, the

justice or justices have power to summon a jury, to try the forcible entry or detainer complained of; and if the same be found by that jury, then, besides the fine on the offender, the justice shall make restitution by the sheriff of the possession, without inquiring into the merits of the title; for the force is the only thing to be tried, punished, and remedied by them; and the same may be done by indictment at the general sessions. But this provision does not extend to such as endeavour to maintain possession by force, where they themselves, or their ancestors, have been in the peaceable enjoyment of the lands and tenements for three years immediately preceding.

Riding or going Armed.—This is particularly prohibited by the Statute of Northampton, 2 Edward III. c. 3, upon pain of forfeiture of the arms, and imprisonment during the king's pleasure; but this statute is obsolete, and men upon lawful business may carry arms for their own protection, although they are answerable for any misuse of them.

False and Pretended Prophecies.—The 5 Elizabeth c. 15, punishes, with a penalty, for the first offence, of £10, and one year's imprisonment; and for the second, forfeiture of all goods and chattels, and imprisonment during life. This Act also seems to be obsolete, although Brothers, the pretended prophet, was punished under it, at the commencement of the French Revolution.

Challenges to Fight, either by word or letter, and the bearers of any such challenge, are punishable by fine and imprisonment, according to the circumstances of the offence; and the parties offending may be bound over to keep the peace. If a challenge arise on account of any money won at gaming, or if any assault or affray happen upon such account, the offender, by 9 Anne, c. 14, shall forfeit all his goods to the crown, and suffer two years imprisonment.

OFFENCES AGAINST PUBLIC TRADE.

Owling, so called from its being usually carried on in the night, is the offence of transporting wool or sheep out of the kingdom. But by the 28 George III. c. 38, all the former statutes respecting the exportation of sheep and wool are repealed, and an infinite variety of regulations

and restrictions upon this subject are consolidated in that statute.

The principal prohibitions are,—that if any person shall send or receive any sheep on board any ship or vessel, to be carried out of the kingdom, the sheep and vessel are both forfeited, and the person so offending shall forfeit £3 for every sheep, and shall suffer solitary imprisonment for three months. But wether sheep, by a licence from the collector of the customs, may be taken on board for the use of the ship's company. And every person who shall export out of the kingdom any wool or woollen article slightly made up, so as easily to be reduced to wool again, or any fuller's earth, or tobacco-pipe clay; and every carrier, ship-owner, commander, mariner, or other person, who shall knowingly assist in exporting, or in attempting to export these articles, shall forfeit 3s. for every pound weight, or the sum of £50 in the whole, at the election of the prosecutor, and shall also suffer solitary imprisonment for three months.

But wool may be carried coastwise upon being duly entered, and security being given, according to the direction of the statute, to the officer of the port from whence the same shall be conveyed. And the owners of sheep which are shorn within five miles of the sea, or within ten miles in Kent and Sussex, cannot remove the wool without giving notice to the officer of the nearest port, as directed by the statute.

Usury.—By the 12 Anne, c. 16, no person shall, directly or indirectly, for loan of any money or any thing, take above the value of £5, for the forbearance of £100 for a year, and so proportionably for a greater or less sum; and all bonds, contracts, and assurances, made for payment of any principal sum to be lent on usury, above the rate of £5 per cent, shall be utterly void; and whoever shall take, accept, or receive, by way of corrupt bargain, loan, &c. a greater interest, shall forfeit treble the money borrowed, one half of the penalty to the prosecutor, the other to the king. And if any scrivener or broker take more than 5s. per cent. procuration money, or more than twelve pence for making a bond, he shall forfeit £20 with costs, and suffer imprisonment for half a year. But these restrictions do not apply to contracts made in foreign countries; for on such contracts the Court will direct the payment of interest according to the law of the country in which such contract was made. Thus, Irish, American, Turkish, and Indian interest have been allowed in our

courts, to the amount of even twelve per cent.; for the moderation or exorbitance of interest depends upon local circumstances, and the refusal to enforce such contracts would put a stop to all foreign trade.

It is also clearly settled that bankers and other persons discounting bills, may not only take five per cent. for interest, but also a reasonable sum besides, for their trouble and risk in remitting cash, and for other incidental expenses. But if a banker deduct the discount of £5 per cent. upon a bill, and, instead of paying the remainder in cash, give a draft for it, even at a short date, this has been held to be usury; for he not only gains five per cent. but also the further benefit of the money till that draft is paid.

Cheating.—By the 7 and 8 George IV. c. 29, it is enacted, that if any person shall by any false pretence obtain from any other person any chattel, money, or valuable security, with intent to cheat or defraud, every such offender shall be guilty of a misdemeanor, and shall be liable, at the discretion of the Court, to be transported for the term of seven years, or to suffer such other punishment, by fine or imprisonment, or by both, as the Court shall award: and whereas a failure of justice frequently arises from the subtle distinction between larceny and fraud; for remedy thereof it is enacted, that if upon the trial of any person indicted for such misdemeanor it shall be proved that he obtained the property in question in any such manner as to amount in law to larceny, he shall not by reason thereof be entitled to be acquitted of such misdemeanor; and no such indictment shall be removeable by certiorari; and no person tried for such misdemeanor shall be liable to be afterwards prosecuted for larceny upon the same facts.

Monopoly.—By 21 James I. c. 3, all monopolies, and all commissions, grants, licences, letters patent, &c. to any person or body politic, &c. for any sole buying, selling, making, working, using of any thing, &c. shall be void; but, by a proviso in the same statute, letters patent for fourteen years for the sole working or making of any new inventions or manufactures are excepted.

Grants to a city or corporation, or to any company, &c. for the maintenance or ordering of trade; and letters patent concerning printing, saltpetre, gunpowder, great ordnance, and shot, are also excepted.

Forestalling, Engrossing, and Regrating.—*Forestalling*, is described by the 5 and 6 Edw. VI. c. 16, to be the buying

or contracting for any cattle, merchandize, or victual, coming on the way to the market; or dissuading persons from buying their goods or provisions there; or persuading them to enhance the price when there.

Regrating is described by the same statute to be the buying of corn or other dead victual in any market, and selling it again in the same market, or within four miles of the place.

Engrossing is also described to be the getting into one's possession or buying up large quantities of corn or other dead victual, with intent to sell them again.

These offences are punishable upon indictment, at the common law, by fine and imprisonment.

Seduction of Artificers and Manufacturers.—To prevent the destruction of our home manufactures, by *transporting and seducing our artists* to settle abroad, several statutes have been passed, most of which are repealed; and the principal object at present is to prevent certain utensils and machinery from being exported.

By the 14 George III. c. 71, if any person export any tools or utensils used in the silk, linen, cotton, or woollen manufactures, (excepting wool cards to North America), he forfeits the same, and £200; and the captain of the ship having knowledge thereof, £100.

And if any captain of a king's ship, or officer of the customs, knowingly suffer such exportation, he forfeits £100, and his employment, and is for ever made incapable of bearing any public office; and every person collecting such tools or utensils, in order to export the same, shall, on conviction at the assizes, forfeit such tools, and also £200.

By 21 George III. c. 3, if any person shall put on board any ship not bound to any place in Great Britain and Ireland, or shall have in his custody, with intent to export, any such article, he shall forfeit the same, and also the sum of £200, and be imprisoned a year, and till the forfeiture be paid; and every captain and custom-house officer knowingly receiving the same, or taking an entry of it, shall forfeit £200.

By 22 George III. c. 60 persons who export, or attempt to export, any engines or implements used in manufactures, shall forfeit £500. Captains of ships and custom-house officers conniving at these offences forfeit £100, and are incapable of holding any office under the crown.

And persons who attempt to export any instrument specified by name in the 26 George III. c. 82, shall forfeit

£200, and be imprisoned one year; and captains and custom-house officers conniving at the offence, are subject to the same penalty, and become incapable of exercising any public employment.

OFFENCES AGAINST PUBLIC HEALTH AND MORALS.

Adultery.—This offence in England is considered merely as a civil injury, the remedy of the husband being by action for damages for the loss of the society, &c. of the wife. The amount of damages is in the discretion of the jury; and is generally regulated by the rank in life, fortune, or previous character of the parties, or from consideration of aggravating or palliating circumstances. To maintain such an action, there must be no connivance on the part of the husband; and any misconduct on his part, such as living apart from his wife, living with other women, &c. might so far affect his claim, as to produce only nominal damages. In default of payment of the damages awarded, the person of the defendant may be imprisoned, and for such debts the benefit of the Insolvent Act cannot be taken.

Seduction.—The only remedy provided for this offence, is by the fiction of allowing the father, mother, relative, master, &c. to sue for the loss of the services of the person seduced, in consequence of pregnancy, when that event follows the seduction. Some actual service, however, must then be proved, as existing between the party seduced and the party bringing the action, though very little will suffice. The verdict, as in actions for adultery, is merely for damages, and the amount depends upon the situation and circumstances of the parties. And the defendant may attempt to show want of character, or of prudence, on the part of the female; who is, however, a competent witness herself to prove the seduction. Where pregnancy does not follow the seduction, the offender cannot be proceeded against at all, except where the seducer carries off a daughter, &c. from the house of her father, &c. when an action will lie for enticing a servant away;—or where a seducer, in an illegal entry of the father's house, debauches the daughter, which would aggravate the damages on action for trespass.

By 1 James I., persons affected with the plague, or dwelling in an infected house, may be commanded by the mayor or constable, or other head officer, to keep within; and if such persons go abroad, and converse in company, with no plague sore upon them, they shall be punished as vagabonds, and may be bound to good behaviour; but if with any infectious sore, they are guilty of felony.

By 39 and 40 George III., c. 80, all former Acts, for performance of quarantine by ships coming from infected countries, are repealed, and the regulations, which are very numerous, are incorporated into that Act; amongst these it is provided, that if a ship come from any place visited with the plague, or other infectious disease, or shall have any person on board actually infected, if the commander shall conceal the same, he shall be guilty of felony without benefit of clergy; and if, while the ship is performing quarantine, he quit the ship himself, or permit any other person to quit it, he forfeits £500; and every other person quitting it, shall suffer six months' imprisonment, and forfeit £200.

Selling Unwholesome Provisions.—To prevent this, the 31 Henry III., st. 6, and the ordinance for bakers, c. 7, prohibit the sale of corrupted wine, and contagious or unwholesome flesh, under pain of amercement for the first offence, pillory for the second, fine and imprisonment for the third, and abjuration of the town for the fourth. And by the 12 Charles II., c. 25. any brewing or adulteration of wine, is punished with the forfeiture of £100, if done by the wholesale merchant, and £40, if done by the vintner or retail dealer.—*Punishment by pillory is repealed.*

Clandestine Marriages.—By the 4 George IV., c. 76, it is enacted, that from the first of November, 1823, all banns of matrimony shall be published in the parish church, or in some public chapel of or belonging to such parish or chapelry wherein the persons to be married shall dwell, upon three Sundays preceding the solemnization of marriage, during the time of morning service, or of evening service (if there shall be no morning service), immediately after the second lesson; and if the persons to be married shall dwell in divers parishes or chapelries, the banns shall be published in the church, or in any such chapel as aforesaid, belonging to such parish or chapelry, wherein each of the said persons shall dwell; and the marriage shall be solemnized in one of such parish churches or chapels.

The bishop of the diocese, with the consent of the pa-

tron and the incumbent of the church of the parish in which any public chapel, having a chapelry thereunto annexed, may be situated, or of any chapel situated in an extra-parochial place, may authorise the publication of banns and solemnization of marriages in such chapel, for persons residing within such chapelry or extra-parochial place respectively.

In every such chapel there shall be placed in some conspicuous place, a notice in the words following: "Banns may be published, and marriages solemnized, in this chapel."

The churchwardens and chapelwardens of churches and chapels, must provide a proper book, marked, and ruled respectively in the manner directed for the register book of marriages; and the banns must be published from the said register-book, and must be signed by the officiating minister, or by some person under his direction.

Notice of the names, and place and time of abode of parties, to be given to the minister seven days before the publication of the banns.

Ministers are not punishable for marrying minors without the consent of parents, &c. after the publication of banns, unless they have notice of dissent; if dissent is publicly declared, the publication of banns is void.

Republication of banns is necessary, if marriage is not solemnized within three months after the first publication.

No licence of marriage shall be granted to solemnize any marriage in any other church or chapel than in the parish church, or in some public chapel of or belonging to the parish or chapelry, within which the usual place of abode of one of the persons to be married shall have been, for the space of fifteen days immediately before the granting of such licence.

If any caveat be entered against the grant of any licence for a marriage, no licence shall issue till the said caveat, or a true copy thereof, be transmitted to the judge out of whose office the licence is to issue, and until the judge has certified to the registrar, that he has examined into the matter of the caveat, and is satisfied that it ought not to obstruct the grant of the licence, or until the caveat be withdrawn by the party who entered it.

For avoiding all fraud and collusion in obtaining of licences, before any licence be granted, one of the parties shall personally swear before the surrogate, &c., that he or she believes that there is no impediment of kindred or alliance, or of any other lawful cause, nor any suit commenced in any ecclesiastical court, to bar or hinder the

proceeding of the said matrimony; and that one of the said parties hath, for the space of fifteen days immediately preceding, had his or her usual place of abode within the parish or chapelry within which such marriage is to be solemnized; and where either of the parties (not being a widower or widow) shall be under the age of twenty-one years, that the consent of the person or persons whose consent to such marriage is required under the provisions of this Act, has been obtained thereto: provided always, that if there shall be no such person or persons having authority to give such consent, it shall be lawful to grant such licence.

Bond not required before granting any licence.

The father, if living, of any party under twenty-one years of age, such parties not being a widower or widow; or if the father shall be dead, the guardian or guardians of the person of the party so under age, lawfully appointed, or one of them; and in case there shall be no such guardian or guardians, then the mother of such party, if unmarried; and if there shall be no mother unmarried, then the guardian or guardians of the person appointed by the Court of Chancery, if any, or one of them, shall have authority to give consent to the marriage of such party.

In case the father or fathers of the parties to be married, or of one of them, so under age, shall be *non compos mentis*, or the guardian or guardians, mother or mothers, or any of them whose consent is made necessary, shall be *non compos mentis*, or in parts beyond the seas, or shall unreasonably or from undue motives refuse or withhold his, her, or their consent to a proper marriage, then persons desirous marrying may apply by petition to the Lord Chancellor, Master of the Rolls, or Vice-Chancellor of England; and in case the marriage proposed shall appear to be proper, the said Lord Chancellor, Master of the Rolls, or Vice-Chancellor, shall judicially declare the same to be so.

If marriages by licence be not solemnized within three months, a new licence must be obtained.

Persons solemnizing matrimony in any other place than a church or public chapel, or at any other time than between the hours of eight and twelve in the forenoon, unless by special licence, or without due publication of banns, unless licence of marriage be first obtained, or pretending to to be in holy orders, shall be guilty of felony, and transported fourteen years: provided that all prosecutions be commenced within three years.

And persons who knowingly and wilfully intermarry in any other place than where banns may be lawfully published, (unless by special licence), without due publication of banns or licence, or acquiesce in the solemnization of marriage by any person not being in holy orders, the marriage of such persons shall be null and void.

And if any valid marriage solemnized by licence shall be procured by a party to such marriage to be solemnized between persons, one or both of whom shall be under the age of twenty-one (not being a widower or widow), contrary to the provisions of this Act, by means of such party falsely swearing as to any matter or matters to which such party is hereinbefore required personally to swear, such party wilfully and knowingly so swearing; or if any valid marriage by banns shall be procured by a party thereto to be solemnized by banns between persons, one or both of whom shall be under the age of twenty-one years, (not being a widower or a widow), such party knowing that such person as aforesaid, under the age of twenty-one years, had a parent or guardian then living, and that such marriage was had without the consent of such parent or guardian, and knowing that banns had not been duly published, and having knowingly caused or procured the undue publication of banns; then and in every such case it shall be lawful for his Majesty's attorney-general, by information in the nature of an English bill in the Court of Chancery, or Court of Exchequer, at the relation of a parent or guardian of the minor, whose consent has not been given, and who shall be responsible for any costs incurred in such suit, to sue for a forfeiture of all estate, right, title, and interest in any property which hath accrued or shall accrue to the party so offending by force of such marriage; and such Court shall have power to order and direct that all such estate, right, title, and interest in the property, shall be secured for the benefit of the innocent party, or of the issue of the marriage, or of any of them; and if both the parties so contracting marriage shall be guilty of any such offence as aforesaid, it shall be lawful for the said Court to settle and secure such property, or any part thereof, immediately for the benefit of the issue of the marriage, subject to such provisions for the offending parties, by way of maintenance or otherwise as the said Court shall think reasonable, regard being had to the benefit of the issue of the marriage during the lives of their parents, and of the issue of the parties respectively by any future marriage, or of the parties

themselves, in case either of them shall survive the other; but no remedy at law, as provided by this section of the Act, can be had, unless such relator or relators had not known or discovered that such marriage had been solemnized more than three months previous to his or their application to the Attorney or Solicitor General.

All agreements, settlements, and deeds, in consequence of or in relation to which marriage such information as aforesaid shall be filed, made by either of the said parties, before and in contemplation of such marriage, or after such marriage, for the benefit of the parties or either of them, or their issue, so far as the same shall be contrary to or inconsistent with the provisions of such security and settlement as shall be made by or under the direction of such Court as aforesaid, under the authority of this Act, shall be absolutely void, and have no force or effect.

Any original information to be filed for the purpose of obtaining a declaration of any forfeiture, shall be filed within one year after the marriage; and in case any person or necessary party to any such information shall abscond, or be or continue out of England, the Court may order such person to appear within such time as shall seem fit; and to cause such order to be served at any place out of England, or to cause such order to be inserted in the London Gazette, and other British or foreign newspapers; and in default of such person appearing, to order such information to be taken as confessed by such person, and to proceed to make such decree or order upon such information, as such court might have made, if such person had appeared to and answered such information: provided always, that in case the person at whose relation any such suit shall have been instituted, shall die pending such suit, it shall be lawful for the Court of Chancery to appoint a proper person or persons, at whose relation such suit may be continued.

After any marriage by banns, it shall not be necessary, in support of it, to give any proof of the actual dwelling of the parties in the parish or chapelries wherein the banns were published; or where the marriage is had by licence, it shall not be necessary to give any proof that the usual place of abode of one of the parties for the space of fifteen days was in the parish or chapelry where the marriage was solemnized; nor shall any evidence in either of the said cases be received to prove the contrary, in any suit touching the validity of such marriage. And

in no case whatsoever shall any suit or proceedings be had in any ecclesiastical court, to compel a celebration of any marriage, by reason of any contract of matrimony.

All marriages shall be solemnized before two or more credible witnesses, besides the minister; and, immediately after, an entry shall be made in the register-book, in which it shall be expressed that the marriage was by banns or licence; and if both or either of the parties married by licence be under age (not being a widower or widow,) with consent of the parents or guardians, as the case shall be; such entry to be signed by the minister, by the parties married, and attested by such two witnesses.

Persons convicted of making a false entry, or of forging, &c. any such entry, or of forging, &c. any licence, or of destroying such register, to be transported for life.

Nothing in this Act extends to marriages amongst the Quakers or Jews, where both the parties to any such marriage shall be Quakers or Jews; and it extends only to England.

Bigamy, or polygamy, is where a man marries more than one wife, or a woman more than one husband, during the existence of any former wife or husband; and this offence by 9 George IV. c. 31, is declared to be *felony*, and liable to be punished with *seven years'* transportation, or imprisonment, for not exceeding *two years*, with or without *hard labour*. It is immaterial whether the second marriage took place in England, or elsewhere; and the offence may be tried in any county where the offender may be apprehended, or in custody; but the statute does not extend to any but British subjects marrying a *second* time *out* of England;—nor to any person marrying a second time whose husband or wife has been *continually absent*, and *not known to be living* for *seven years* together;—nor to any person legally divorced, or whose former marriage has been legally declared void. On prosecutions for bigamy, the *first* wife, or husband, is not a witness; but the second may be a witness after the first marriage is proved, the second ceremony in fact being no marriage at all.

Vagrancy: Idle and Disorderly Persons.—Persons able wholly or in part to maintain themselves or family and wilfully refusing or neglecting so to do, by which any of the family becomes chargeable to the parish, &c.; persons becoming chargeable to any parish, &c. from whence they have been legally removed; chapmen or pedlars trading without licence, or otherwise authorised by law; common prostitutes, behaving in a riotous or indecent manner; and persons begging alms, or encouraging chil-

dren so to do, are deemed *idle and disorderly persons;* and any justice may commit them to the house of correction and hard labour, for any time not exceeding one calendar month.

Rogues and Vagabonds.—Persons committing any of the offences before-mentioned, after having been convicted as idle and disorderly; persons pretending to tell fortunes, or deceive any of his Majesty's subjects; persons lodging in any barn, outhouse, or unoccupied building, or in the open air, or under a tent, or in any cart or waggon, not having any visible means of subsistence, and not giving a good account of themselves; persons exposing, in any public place, obscene prints, or other indecent exhibitions; persons wilfully exposing the person in any public place, with intent to insult a female; persons endeavouring, by the exposure of wounds, &c. to obtain alms; persons endeavouring to procure charitable contributions under false pretences; persons leaving wife or children chargeable to the parish, &c.; persons playing in public places at any game of chance; persons having in their possession any implement, with intent feloniously to break into any dwelling-house, &c. or being armed with any weapon, with intent to commit any felonious act; persons found in any dwelling-house, for unlawful purposes; suspected persons or reputed thieves, frequenting any river, canal, &c. or the avenues leading thereto, or adjacent, with intent to commit felony: and persons apprehended, as idle and disorderly, violently resisting the officer, and convicted of the offence for which they were apprehended, are deemed *rogues and vagabonds;* and any justice may commit them to hard labour, for any time not exceeding three calendar months; and such implements and weapons be forfeited.

Incorrigible Rogues.—Persons breaking prison before the expiration of the term for which they have been committed; persons committing offences as rogues and vagabonds, having been before duly convicted thereof; and persons apprehended as rogues and vagabonds, resisting the officer, and being subsequently convicted, are deemed *incorrigible rogues;* and any justice may commit such offenders to the house of correction, there to remain until the next general or quarter sessions of the peace, such offenders being kept to hard labour.

Any person may apprehend vagrants; and all constables and other persons refusing to assist, are liable to fine and punishment.

Any justice, upon oath that any person hath committed, or is suspected to have committed any offence against this Act, may issue his warrant to apprehend and bring before him the person so charged.

Officers or other persons apprehending persons charged with being idle and disorderly, or rogues and vagabonds, or incorrigible rogues, may take any horse, &c. caravan, &c. or goods in the possession or use of such persons, as well as the persons, before some justice, who may order the offender and his trunks, &c. to be searched, and order any money found to be applied towards the expense of apprehending and maintaining such offenders during the time for which they are committed; and if money sufficient be not found a part or the whole of the other effects found may be sold, and the produce applied as aforesaid; the overplus being returned to the offenders.

When any justice commits any *incorrigible rogue* to the house of correction till the next general or quarter sessions, or when any *idle and disorderly person, rogue and vagabond,* or *incorrigible rogue,* gives notice of his intention to appeal, the person by whom such offender is apprehended, and those whose evidence is material, must be bound in recognizances to appear at the sessions; and the justices may order the treasurer of the county, &c. to pay such sums as the Court deem reasonable, for their expenses; and if any such persons refuse to enter into recognizances, the justice may commit them to the common gaol.

When any *incorrigible rogue* is committed until the next sessions, the justices assembled may examine into the circumstances, and order such offender to be further imprisoned, and kept to hard labour, for not exceeding one year; and such offender (not being a female) may be punished by whipping.

Constables, &c. neglecting their duty, or any person disturbing them in the execution of this Act, are to forfeit not exceeding £5.

Any justice, upon information on oath that any *idle and disorderly person, rogue and vagabond,* or *incorrigible rogue,* is suspected to be concealed in any house kept for the reception of travellers, may authorise any constable or other person to enter at any time into such house, and apprehend such offender.

Persons aggrieved may appeal to the next sessions, giving notice thereof within seven days, and entering into a recognizance, with sufficient surety, to appear and prosecute such appeal.

Visiting justices, however, may grant certificates, enabling persons discharged from prison to receive alms or relief upon their route to their place of settlement: and persons having such certificates, acting contrary to the directions thereof, or loitering on the way, are deemed *rogues and vagabonds;* and persons asking alms or relief under any prohibited certificate, are liable to be declared idle and disorderly persons, in like manner as if they possessed no such certificate.

No proceeding before any justice under this Act shall be quashed for want of form; and justices and other officers are to have treble costs in any proceedings at law wherein the verdict is given for them, unless the Court shall certify that there was reasonable cause of action. Every action against them must be commenced within three calendar months.

Persons convicted under this Act are deemed actually chargeable to the parish, &c. where they reside, and may be removed to the place of their last legal settlement.

Common Nuisances.—A common nuisance may be defined to be an offence against the public, either by doing a thing which tends to the annoyance of all the king's subjects, or by neglecting to do anything which the common good requires.

All disorderly inns or ale-houses, bawdy-houses, gaming-houses, stage-plays, unlicensed booths, and stages for rope-dancers, mountebanks, and the like, are public nuisances, and may, upon indictment, be suppressed, and the persons offending fined.

Lotteries.—By the 10 and 11 William III., c. 47, all pretended lotteries are declared to be public nuisances, and all grants or licenses for the same to be contrary to law. By the 42 George III., c. 119, all lotteries, called *Little-Goes*, are declared to be public nuisances; and if any one shall keep an office or place to exercise or expose to be played any such lottery, or any lottery whatever not authorised by Parliament, or shall knowingly suffer it to be exercised or played at in his house, he shall forfeit £500. and be deemed a rogue and vagabond. And if any person shall promise to pay any money or goods on any contingency relative to such lottery, or publish any proposal respecting it, he shall forfeit £100. *State* lotteries were abolished by 4 George IV., c. 60. And even the sale of shares in foreign lotteries is prohibited in England. And all *raffles* or devices under the denomination of sales, equivalent to lotteries, are prohibited under heavy penalties. If any

editor of a newspaper, or other person, advertises any illegal scheme of gaming in the lottery, he is subject to a penalty of £50.

Fireworks.—By the 9 and 10 William III., c. 7, the making and selling of fireworks and squibs, or throwing them about in any street, is declared to be a common nuisance; and the punishment is, for making and selling, £5. and for throwing or firing them, 20*s.*

Dogs.—It is a public nuisance to suffer any mischievous dog to go loose or unmuzzled; and the owner thereof may be indicted, and an action for damages will also lie in such case against him. But such action cannot be brought, unless the owner had notice of his having bit somebody, at least once before.

Hogs.—It is a nuisance to suffer them to roam about the public streets in the metropolis and its vicinity.

Furnaces.—By the 1 and 2 George IV., c. 41, which recites that great inconvenience has arisen from the improper construction as well as negligent use of furnaces employed in the working of engines by steam, and although such nuisances, being of a public nature, are abateable by indictment, yet the expense attending the prosecution, has deterred parties suffering thereby from seeking the remedy given by law, it is enacted, that it shall be lawful for the court, in case of conviction on any such indictment, to award costs to the prosecutor, to be paid by the party convicted. And if it shall appear that the grievance may be remedied by altering the construction of the furnace, the court may, without the consent of the prosecutor, make such order as may be expedient for preventing the nuisance in future, before passing final sentence on the defendant. These provisions do not extend to furnaces of steam engines erected solely for the purpose of working mines, or employed solely in the smelting of ores and minerals, or in the manufacturing of the produce of such ores and minerals where they are raised.

Gaming, Wagers, &c.—To restrain the pernicious effects of gambling, the 33 Henry VIII., c. 9, sec. 11, and the 33 George III., c. 24, enact, that no person of what degree, quality, or condition soever, shall by himself, or agent, for his gain, lucre, or living, keep any house for playing at any game prohibited by any statute, or any new unlawful game afterwards invented, on pain of 40*s.* a day, and 6*s.* 8*d.* for every person frequenting such house. And the same statutes prohibit to all but gentlemen, the games of tennis, tables, cards, dice, bowls, and other unlawful

diversions therein specified, unless in the time of Christmas, under fine and imprisonment. The 9 George IV. c. 61 prevents any gaming whatever by *any* persons in public-houses, at any time, under a penalty of not exceeding £5, upon the master of the house, for the first offence; £10, for the second; and £20, for the third, with forfeiture of licence. And by 5 George IV. c. 83, persons *playing* or *betting* in any *open* or *public* place, with any table or instrument, at any pretended game of chance, may be treated as vagrants.

By the 16 Charles II. c. 7, if any person, by playing or betting at any game or pastime whatsoever (other than for ready money,) lose more than £100, at any one time or meeting upon tick or credit, or otherwise, he shall not be compellable to pay the same; and the winner shall forfeit treble the value, one moiety to the king, and the other to the informer.

By the 9 Anne, c. 14, all bonds and other securities given for money won at play, or money lent at the time of play withal, shall be utterly void; and all mortgagees and incumbrances of lands made upon the same consideration shall be and enure to the use of the heir of the mortgagor; and if any person at any one time or sitting lose £10 at play, and shall pay the same, or any part thereof, he may recover it back from the winner. If the loser do not recover back the money so lost within three months, any other person may recover the same, and treble the amount besides, with costs, one half for himself, the other half to the poor; and if a promissory note or other security has been given for money so lost, by the 18 George II. c. 24, sec. 3, such winner may, by bill in equity, be forced to discover the fact upon oath; and in any of these suits, no privilege of parliament shall be allowed.

The 9th of Anne further enacts, that if any person, by cheating at play, shall win any money or valuable thing, or shall at any one time or sitting win more than £10, he may be indicted thereupon, and shall forfeit five times the value to any person who will sue for it; and in case of cheating, shall be deemed infamous, and suffer such corporal punishment as in case of wilful perjury.

By several statutes of the reign of George II. *viz.* 12 George II. c. 28; 13 George II. c. 19; 18 George II. c. 39, all gaming by private lotteries with tickets, cards, or dice, and particularly the games of faro, basset, ace of hearts, hazard, passage, rolly-polly, and other games with dice, except back-gammon, are prohibited, under a penalty of £200, for

him who shall erect such lotteries, and £50 a time for the players.

Horse-racing.—By the 13 George II. c. 19, no plates or matches under £50 value shall be run, upon penalty of £200, to be paid by the owner of each horse running, and £100, by such as advertise the plate. At Newmarket and Black Hambleton, however, a race may be run for any sum or stake less than £50. But though such horse-races are lawful, yet it has been determined that they are games within the 9 Anne, c. 14, and that, of consequence, wagers above £10 upon a lawful horse-race are illegal. A foot-race, and a race against time, have also been held to be games within the statute of gaming. So a wager to travel a certain distance within a certain time, with a post-chaise and a pair of horses, has been considered of the same nature. A wager for less than £10, upon an illegal horse-race, is also void and illegal. And though the owners of horses may run them for a stake of £50, or more, at a proper place for a horse-race, yet it has been held, if they run them upon the highway, the wager is illegal. By the 18 George II. c. 34, the 9th of Anne is further enforced, and some deficiency supplied; the forfeitures of that Act may now be recovered in a court of equity; and moreover, if any man be convicted, upon information or indictment, of winning or losing at play or betting at one time £10, or £20 within twenty-four hours, he shall be fined five times the sum, for the benefit of the poor of the parish.

By the 9 George I. c. 19, if any person shall, by colour of any grant from any foreign prince, set up any lottery, or undertaking in the nature of a lottery, &c., he shall forfeit £200. By 10 Henry VIII. c. 26, sec. 109, no person shall keep any office or place for making insurances of marriages, births, christenings, &c., on pain of £500. And by 7 George II. c. 8, all wagers relating to the present or future price of stocks are deemed illegal and void.

OFFENCES AGAINST THE PERSONS OF INDIVIDUALS.

Homicide.—Homicide, or the killing of any human creature, is of three kinds; justifiable, excusable, and felonious.

Justifiable homicide is of divers kinds:—Such as some unavoidable *necessity*, without intention, or negligence in the party killing

Homicide for the *advancement of public justice*, or where an officer, in the execution of his office, kills a person that assaults or resists him; or if an officer or any private person attempt to take a man charged with felony, and is resisted, and in the endeavour to take him kills him.

Where the prisoners assault the gaoler or officer, and in defence he kill any, it is justifiable. If trespassers in forests, &c., will not surrender, they may be slain. But then there must be an *apparent necessity* on the officer's side, *viz.* that the party could not be arrested, the riot could not be suppressed, the prisoners could not be kept, or the deer-stealers could not but escape, unless such homicide were committed.

Homicide committed for the *prevention* of any forcible and atrocious crime is justifiable; as, if a person attempt robbery and murder, or attempt to break open a house *in the night-time*, and be killed in such attempt the slayer shall be acquitted. But this reaches not to any crime *unaccompanied with force*, as picking pockets, or breaking open a house *in the day-time*, unless there is an attempt at robbery also.

A woman is justified in killing one who attempts to ravish her; and the husband or father may justify killing a man who attempts a rape upon his wife or daughter; but not if he take them in adultery by consent; the one being forcible and felonious, but not the other.

Excusable homicide is either by misadventure, or upon a principle of self-preservation.

Homicide by *misadventure* is, where a man doing a lawful act, without any intention of hurt, unfortunately kills another; as, where a man is at work with a hatchet, and the head flies off, and kills a stander-by; or where a person qualified to keep a gun is shooting at a mark, and undesignedly kills a man; for the act is lawful and the *effect* is merely accidental.

So where parents moderately correct a child, a mast his apprentice or scholar, or an cfficer punish a criminal, and happen to occasion his death, it is only misadvent re, for the act of correction was lawful; but if he exceed the bounds of moderation, either in the manner, the instrument, or the quantity of punishment, and death ensue it is manslaughter at least, and in some cases (according to the circumstances) may amount to murder.

To whip another's horse, whereby he runs over a child and kills him, is accidental in the rider, but manslaughter in the person who whipped; for the act was a trespass, and of inevitably dangerous consequence.

Homicide *in self-defence*, upon a sudden affray is *excusable*, rather than justifiable, by the English law. This self-defence is that whereby a man may protect himself from an assault, in the course of a sudden brawl or quarrel, by killing him who assaults him. This right of natural defence does not imply a right of attacking; and therefore they cannot legally exercise this right, but in sudden and violent cases, when certain and immediate suffering would be the consequence; and to excuse homicide by the plea of self-defence, it must appear that the slayer had no other possible (or, at least probable) means of escaping.

Felonious homicide is the killing of a human creature, of any age or sex, without justification or excuse. This may be done either by killing one's self or another man; which last species is again divided into *manslaughter* and *murder*.

Self-Murder.—Formerly, the punishment for this crime was an ignominious burial in the king's highway, with a stake driven through the body; but now, by the 4 George IV. c. 32, it is enacted, that the coroner shall give directions for the private interment of the remains, without any stake being driven through the body; in the church-yard or other burial-ground of the parish in which the remains of such person might by the laws or customs of England be interred, if the verdict of *felo-de-se* had not been found; such interment to be made within twenty-four hours from the finding of the inquisition, and to take place between the hours of nine and twelve at night. But nothing herein shall authorise the performing of any of the rites of Christian burial on the interment of the remains of any such person; nor shall anything hereinbefore contained be taken to alter the laws or usages relating to the burial of such persons, except so far as relates to the interment of such remains in such church-yard or burial ground, at such time and in such manner as aforesaid.

Manslaughter.—Manslaughter is the unlawful killing of another, without malice either express or implied; which may be either voluntary, upon a sudden heat; or involuntary, but in the commission of some unlawful act.

As to the first or *voluntary* branch: if upon a sudden quarrel two persons fight, and one of them kill the other,

this is manslaughter; and so it is, if they upon such an occasion go out and fight in a field, for this is one continued act of passion. So also if a man be greatly provoked, as by pulling his nose, or other great indignity, and immediately kill the aggressor; though this is not excusable in self-defence, as there is no absolute necessity for doing it to preserve himself; yet it is not murder, for there is no previous malice, but it is manslaughter. But if there be a sufficient cooling time for passion to subside, and reason to interpose, and the person so provoked afterwards kill the other, this is deliberate revenge; and accordingly amounts to murder. So, if a man take another in the act of adultery with his wife, and kill him upon the spot, it is manslaughter, but the lowest degree of it.

Involuntary manslaughter differs from homicide excusable by misadventure in this; that misadventure always happens in consequence of a lawful act, but this species of manslaughter in consequence of an unlawful one. As if two persons play at sword and buckler, and one of them kill the other, this is manslaughter, because the original act was unlawful; but it is not murder, for one had no intent to do the other any personal mischief. So where a person does an act lawful in itself, but without due caution, as when a workman flings down a stone, &c. and kills a man; this may be either misadventure, manslaughter, or murder, according to the circumstances. If it were in a country village, where few passengers are, and he called out to all people to have a care, it is a misadventure only; but if in London, or other populous town, where people are continually passing, it is manslaughter though he gave loud warning; and murder, if he knew of their passing, and gave no warning at all, for then it is malice against all mankind.

The crime of manslaughter amounts to felony, but the Court may impose a fine; or transport for the term of natural life, or any other term as the Court shall adjudge; or imprison only, or imprison and keep to hard labour, not exceeding three years; or direct such pecuniary fine as it may think meet.

Murder.—Murder arises from the deliberate wickedness of the heart, and is defined to be, "when a person of sound memory and discretion unlawfully kills any reasonable creature in being, and under the king's peace, with malice aforethought, either express or implied."

Malice is the great criterion by which murder is distinguished from every other kind of homicide. *Express malice*

is that deliberate intention to take away the life of a fellow-creature, which is manifest by external circumstances, capable of proof; as lying in wait, attendant menaces, former grudges, and concerted schemes to do him some bodily harm. *Implied malice* is that inference which arises from the nature of the act, though no particular malice can be proved. If a man kill another suddenly, without any, or without a considerable provocation, the law implies malice.

If one kill an officer of justice, in the execution of his duty, or any of his assistants endeavouring to conserve the peace, or any private person, endeavouring to suppress an affray, or apprehend a felon, knowing his authority or the intention with which he interposes, the law will imply malice, and the killer will be guilty of murder.

And if any one intend to do a felony, and undesignedly kill a man, this is also murder. Thus, if one shoot at A, and miss him, but kill B, this is murder, because of the previous felonious intent, which the law transfers from one to the other. The same is the case where one lays poison for A, and B (against whom the prisoner had no malicious intent) takes it, and it kills him.

And by the 43 George III. c. 58, if any persons wilfully and maliciously administer, or cause to be administered, to any of his majestys' subjects, any deadly poison, with intent to murder, he, his counsellors, aiders, and abettors, are guilty of felony.

If a man do an act, of which the probable consequence may be, and eventually is, death; such killing may be murder, although no blow be struck by himself, and no killing may be primarily intended: as was the case of the unnatural son, who exposed a sick father to the air against his will, by reason whereof he died; of the harlot, who laid her child under leaves in an orchard, where a kite struck it, and killed it: of the parish officers, who shifted a child from parish to parish, till it died for want of care and sustenance; and of the master, who refused necessary food and sustenance to his apprentice, and treated him with such continued harshness and severity as to occasion his death.

To prevent the abominable practice of procuring abortions, by the 43 George III. c. 58, if any person wilfully and maliciously administer to, or cause to be administered to, or taken by, any woman then quick with child, any noxious or destructive substance, with intent to procure the miscarriage of her child, such person, and all who counsel,

aid, and abet, are guilty of felony. And to attempt, by administering drugs, to destroy a living infant in the womb, though it may in no degree be injured, is also punishable with death; and where any medicines are administered, or instrument be used to cause abortion, and the woman shall not be quick with child, such offenders are guilty of felony, and may be fined, imprisoned, whipped, or transported for not exceeding fourteen years

In atrocious cases, it was very common to direct the murderer to be hung in chains, near the place, but this is no part of the legal judgment, and it is enacted by 25 George II. c. 37, that the judge before whom any person is found guilty of murder. shall pronounce sentence immediately, unless he see cause to postpone it, and direct him to be executed the next day but one (unless the same shall be Sunday, and then on the Monday following,) and that his body be dissected, and that the judge may direct his body to be afterwards hung in chains, but in no wise to be buried without dissection;* and during the short but awful interval between sentence and execution, the prisoner shall be kept alone, and sustained with only bread and water. The judge upon good and sufficient cause, may respite the execution

Petit Treason —Petit treason, according to the 25 Edward III c. 2, may happen by a servant killing his master; a wife her husband, or an ecclesiastical person (either secular or regular) his superior, to whom he owes faith and obedience. So if a wife be divorced, and if she kill a divorced husband, she is a traitress By the 30 George III c. 48, women were no longer sentenced to be burned, but in all cases of high and petit treason are condemned to be drawn and hanged; and subject to dissection and the time of execution, by 25 George II c. 37, as in case of murder. But by 9 George IV. this offence is assimilated to that of murder, and the parties punished in the same manner.

Mayhem.—Mayhem is the violently depriving another of such members as may render him less able to defend himself, or annoy his adversary. The cutting off, or disabling, or weakening a man's hand or finger, or striking out his eyes or fore-tooth, or depriving him of those parts the loss of which, in all animals, abates their courage, are held to be mayhems; and by 22 & 23 Charles II. c. 1, called the Coventry Act, if any person by lying in wait unlaw-

* The *dissection* of the body is repealed by 2 and 3 William IV. c. 74, and the body is ordered to be buried within the precincts of the gaol, or hung in chains, as the Court may direct.

fully cut or disable the tongue, put out an eye, slit the nose, cut off a nose or lip, or cut off or disable any limb or member of any other person, *with intent to maim or to disfigure him*, such person, and his aiders and abettors, are guilty of felony. Besides, if any person stab, wound, or cut any of his majesty's subjects, with intent to murder, rob, maim, disfigure, or disable him, or to do him some grievous bodily harm, or with intent to resist or prevent the apprehension and detainer of the person so stabbing or cutting, or of any of his accomplices, for offences for which they might be lawfully apprehended, he, his counsellors, aiders, and abettors, shall be guilty of felony; but if such acts of stabbing, &c., were committed under circumstances that, if death ensued, the same would not amount to murder, the person so indicted shall be acquitted.

Forcible Abduction of Women.—Persons from *motives of lucre* taking away or detaining, against her will, with intent to marry or defile her, or to cause her to be married or defiled, any woman who has a present or future interest in any real or personal estate, or an heiress presumptive, or next of kin to any one having such interest, such offender, and all aiders or abetters, &c., are guilty of felony, and liable to transportation for life, or any term not less than four years, or imprisonment, with or without hard labour, for any term not exceeding four years.

Unlawful Abduction.—If any person above fourteen unlawfully *take away any woman-child unmarried* within the age of sixteen years, he shall be imprisoned or fined, or both, at the discretion of the Court.

Rape.—This crime is felony; as is also the abominable wickedness of carnally knowing any woman-child under the age of ten years; in which case the consent or non-consent is immaterial, as from her tender years she is incapable of judgment and discretion.*

The material facts requisite to be given in evidence and proved apon an indictment of rape, are, that the party ravished is a competent witness; though how far she is to be believed, must be left to the jury. If the witness be of good fame, presently discovered the offence, and made search for the offender; or if the party accused fled: these circumstances give probability to her evidence. But, if of evil fame, being unsupported by others, and she con-

* Carnal knowledge of a girl between the ages of *ten* and *twelve* years, is a *misdemeanor* whether *with* or *without* her consent; and punishable with *imprisonment*, at the discretion of the Court.

ceal the injury for any considerable time; or, if the place was where she might have been heard, and she made no outcry; the circumstances carry a strong presumption *against* her testimony.

The Crime against Nature—May be committed either with man or beast; and is felony, punishable with death.

Kidnapping—Or the forcible abduction or stealing away of a man, woman, or child, from their own country, and sending them into another, is punishable with fine and imprisonment. And captains leaving such persons abroad, or forcing any persons on shore, or wilfully leaving them behind, if able and desirous to return, are liable to fine and imprisonment, at the discretion of the Court. 9 George IV. c. 31, s. 30.

Child Stealing.—Persons maliciously forcing or enticing children under ten years of age, with intent to deprive parents or others of the possession of them, or with intent to steal any thing from such children, or who conceal or harbour any children so stolen, with their accomplices, &c. are guilty of *felony*, and liable to transportation for seven years, or imprisonment, with or without hard labour, for not exceeding two years; and if males, to be once, twice or thrice whipped in addition. This act, however, does not extend to the fathers of illegitimate children, or any person claiming lawful title to their custody.

Arson—Is the wilful and malicious burning of the house, or outhouses that are parcel thereof, though not contiguous thereto, nor under the same roof, as barns, stables, &c.; and arson may be committed by wilfully setting fire to *one's own house*, provided one's neighbour's house may thereby be burned; and by the 43 George III. it is felony for a man to set fire to his own house, with intent to defraud any insurance company, or any corporate body.*

Burglary—Is the breaking and entering a house by *night*, with intent to commit a felony. It may also be committed by breaking the gates or walls of a *town*, in the night. But no building, although within the same curtilage with the dwelling house; and occupied therewith, is part of such dwelling-house for the purpose of burglary, unless a communication exists between such building and the house, either immediate, or by means of a *covered* and *inclosed* passage leading from one to the other.

If a person leave his doors and windows open, the entry is no burglary; yet if afterwards an inner or chamber-door

* By 6 Anne, cap. 31, servants negligently setting fire to any place are liable to forfeit £100, or be sent to prison for eighteen months.

is opened, it becomes so. To knock at the door, and upon opening it, rush in with a felonious intent; or under pretence of taking lodgings, to fall upon the landlord, and rob him; or to procure a constable to gain admittance in order to search for traitors, and then to bind the constable, and rob the house; all these entries have been adjudged burglarious. If a servant open and enter his master's chamber-door, with a felonious design; or if any other person lodging in the same house, or in a public inn, open and enter another's door with such evil intent, it is burglary; and if a servant conspire with a robber, and let him into the house by night, it is burglary in both.

OFFENCES AGAINST THE PROPERTY OF INDIVIDUALS.

Larceny is either simple or mixed, and was distinguished into *grand* and *petty;* but this distinction is abolished, and every larceny, whatever be the value of the property stolen, is deemed of the same nature, and subject to the same incidents as grand larceny; and persons convicted of simple larceny, or of any felony punishable like simple larceny, are liable to be transported for seven years, or to be imprisoned for any term not exceeding two years, and, if males, to be once, twice, or thrice publicly or privately whipped, if the Court think fit. And on a *second conviction* for larceny, the offender may be *transported for life.*

Mixed or *compound larceny,* is a felonious taking of the goods of another, either from his person or from his house, and includes the crimes of robbery and housebreaking.

Simple larceny, is the felonious taking and carrying away the personal goods of another. Every larceny must include a trespass; and if the party be guilty of no trespass, he cannot be guilty of felony in carrying the goods away. The property must be taken from the possession of the owner; and a person who has the bare charge or special use of goods, but *not the possession,* as a shepherd who looks after sheep, or a butler who takes care of plate, may be guilty of felony in taking them away. And, in general, if the possession of property be obtained by any contrivance, *with intent to steal,* as by pretending to find a valua-

ble ring, cutting cards, or laying wagers, or by undertaking to change a note into cash, or gold into silver, it amounts to felony.

The goods taken must be personal goods of some intrinsic value; for larceny cannot be committed of things fixed to the freehold, or savouring of the realty; as corn, grass, trees, and the like. But if the thief sever them at one time, and come again at another, and take them away, the after taking is larceny.

Stealing and Embezzlement by Clerks, Servants, &c.—By 7 and 8 George IV., c. 29, s. 46, clerks or servants stealing any chattel, money, or valuable security, from a master, may be transported for not exceeding fourteen years nor less than seven, or imprisoned for not exceeding three years, and, if males, to be once, twice, or thrice publicly or privately whipped. And fraudulently embezzling any such chattel, &c., is a stealing under this Act, although the property never came into the actual possession of the master. One indictment may contain three distinct acts of embezzlement, if committed against the same master, within six months from the first to the last; and, except where the offence relates to any chattel, it is sufficient to allege the embezzlement to be of money; which allegation may be sustained, if the offender is proved to have embezzled *any* amount, although the particular species of coin or valuable security shall not be proved.

Embezzlement by Agents.—By 7 and 8 George IV., c. 29, sec. 49, if any money, or security for the payment of money, is entrusted to any banker, or other agent, with directions in writing how to apply it, and he convert it to his own use, he is guilty of a misdemeanor, and may be transported for not exceeding fourteen nor less than seven years, or suffer fine or imprisonment, or both, as the Court may award. The abuse of any power of attorney, for the sale or transfer of any interest in any public fund, of this or any foreign state, or in any fund of any company, is liable, at the discretion of the Court, to any of the above punishments.

By 15 George II., c. 13, officers or servants of the Bank of England, embezzling notes or securities, are guilty of felony, and punishable with death.

By 5 George III., c. 25, and 7 George III., c. 50, if any person employed in the Post-Office, secrete, embezzle, or destroy any letter, &c., containing any bank note, or security for the payment of money, or steal and take the same out of any letter, &c., he shall suffer death. If he destroys any

letter, &c. with which he has received money for postage, or shall advance the rate of postage, and secrete the money, he is guilty of single felony. And persons employed who wilfully purloin, embezzle,* or destroy, or wilfully permit other persons to destroy, any newspapers, or any other printed papers sent by post without covers, or in covers open at the sides, are deemed guilty of a misdemeanor.

Robbing the mail, or any *receiving-house*, of letters, &c. is felony, punishable with death.

Depredations by Tenants and Lodgers.—Persons stealing any chattel or fixture let to be used in any house or lodging, are guilty of felony, and may be punished as in case of simple larceny.

Stealing Wills.—Persons who steal, or for any fraudulent purpose destroy or conceal any testamentary instrument, are guilty of a misdemeanor.

Stealing Title Deeds.—The same applies to the stealing of any paper or parchment, being evidence of the title or of any part of the title, to any real estate.

Stealing Dogs, Birds, &c.—Persons stealing any dog or beast, or bird, ordinarily kept in a state of confinement, not being the subject of larceny, for the first offence forfeit, over and above the value of the dog, &c., any sum not exceeding £20; and, on a second offence, may be committed to hard labour for not exceeding twelve calendar months; and two justices may order a male offender to be once or twice publicly or privately whipped. The punishment is the same for having such dogs, &c., or the skin or plumage, in possession, *knowing* it to have been stolen. And persons killing, wounding, or taking pigeons, &c. under circumstances not amounting to larceny, incur a penalty not exceeding 40*s*

Stealing Cattle.—Persons stealing any horse, mare, gelding, colt, or filly, or any bull, cow, ox, heifer or calf, or any ram, ewe, sheep, or lamb, or shall wilfully kill any of such cattle, with intent to steal the carcase or skin, or any part of the cattle so killed, were guilty of felony, and incurred the penalty of death; but by 2 and 3 William IV., c. 44, the punishment is now altered to *transportation for life;* and, at the discretion of the Court, to a previous imprisonment for four years, with or without hard labour.

Stealing Trees, Shrubs, &c.—Persons stealing, or damaging with intent to steal, the whole or part of any tree or shrub, growing in any park, orchard, or ground adjoining to any dwelling-house, if the amount of the injury

done exceeds one pound, are guilty of felony, and may be punished as in simple larceny; and if growing *elsewhere*, if the amount of the injury done exceeds *five* pounds, the same penalty applies. If the injury done amounts to 1s., the offender, for the first offence, forfeits not exceeding £5; and if convicted afterwards, may be committed to hard labour for not exceeding twelve calendar months, and two justices may further order a male offender to be once or twice publicly or privately whipped. If persons *twice* convicted, afterwards commit the said offences, they are guilty of felony, and may be punished as in simple larceny.

Stealing in Gardens.—Persons stealing, or damaging with intent to steal, any vegetable production in any garden, orchard, nursery-ground, hothouse, greenhouse, or conservatory, may be imprisoned, or imprisoned and kept to hard labour, for not exceeding six months, or forfeit, over and above the amount of the injury done, not exceeding twenty pounds; and persons afterwards committing such offences, are guilty of felony, and may be punished as in simple larceny.

Persons stealing, or damaging with intent to steal, any cultivated root or plant not in a garden, orchard, or nursery ground, may be imprisoned only, or imprisoned and kept to hard labour, for not exceeding one month, or forfeit, above the amount of the injury done, any sum not exceeding twenty shillings, and in default of payment, together with costs (if ordered), may be committed for not exceeding one month; and if afterwards guilty of the offence, may be committed to hard labour for not exceeding six calendar months; and two justices may order a male offender to be once or twice publicly or privately whipped.

Stealing from Mines.—Persons stealing the ore of any metal or coal, are guilty of felony, and may be punished as in cases of simple larceny.

Taking or destroying Fish—Unlawfully, in land adjoining the dwelling-house of the owner, is a misdemeanor, and may be punished by fine, or the forfeiture of the implements. Taking fish in private waters, not attached to lands adjoining a dwelling house, incurs a penalty, over the value of the fish, of not exceeding £5. This does not relate to angling in the day time; for which the punishment for offending in the first description of water is only a penalty of £5; and in the second, a penalty of only £2. The owner of the grounds, &c. on such occasions, may

seize the implements of persons found angling; but when they are so taken, no further penalty can be recovered.

Stealing Oysters from any oyster-bed, laying, or fishery, the property of any person, sufficiently known as such, is a larceny; and persons unlawfully using any engine within the limits, for the purpose of taking oysters, although none be taken, are guilty of a misdemeanor, and may be punished by fine or imprisonment, or both; such fine not to exceed £20, and such imprisonment not to exceed three calendar months. But floating fish may be taken in the limits of any oyster fishery, with nets adapted to take floating fish only.

Stealing or destroying Fences.—Persons stealing, or damaging with intent to steal, any live or dead fence, stile, or gate, for the first offence, forfeit, above the amount of the injury done, any sum not exceeding £5, and if convicted afterwards, may be committed to hard labour for not exceeding twelve calendar months; and two justices may order a male offender to be once or twice publicly or privately whipped. The unlawful possession of any part of a live or dead fence, of the value of *two shillings*, incurs a penalty of not exceeding *forty shillings.*

Stealing Goods in process of Manufacture.—Persons so offending, to the value of 10*s.*, are liable to be transported for life, or for not less than seven years, or to be imprisoned for not exceeding four years, and males may be once, twice, or thrice publicly or privately whipped, if the Court shall think fit. And stealing by day or night, any linen or goods whatsoever, exposed to be printed, bleached, bowked, or dried, in any printing or bleaching ground, or in any place belonging, to the value of 10*s.*, or assisting in so doing, is felony; but the judge has a discretionary power to transport for fourteen years.

Stealing from Vessels or Boats.—By the 7 and 8 George IV. c. 19, persons stealing goods from any vessel, in port, navigable river, canal, or creek, or from any dock, &c. adjacent, may be transported for life, or not less than seven years; or imprisoned not exceeding four years, and males may be once, twice, or thrice whipped in addition. —Plundering vessels wrecked or in distress is felony, punishable with death; except the articles stolen are of small value and stolen without violence, when the offence is reduced to *common larceny*. Persons in possession of shipwrecked goods, without satisfactorily accounting for such possession, may be fined any sum not exceeding 20*s.* and the goods be delivered to the owner; and persons offering

such goods for sale, may be apprehended by any custom, excise, or peace officer, or any person to whom they are offered, and dealt with as before mentioned by any magistrate.

Decoying Children under the age of ten years, with intent to deprive parents or persons having the lawful care of them, or with intent to steal any thing, are guilty of felony, and liable to the punishment of larceny.

Mixed or Compound Larceny consists in a felonious taking from one's house, or person. Larceny *from the person* is either by *privately stealing*, or by open and violent assault, which is usually called *robbery.*

By the 7 and 8 George IV. c. 29, persons forcibly and by menaces robbing another of any chattel, money, or valuable security, shall suffer death as felons. And persons stealing such property, or assaulting with intent to rob, or by menaces or force demanding any such property with intent to steal, are guilty of felony, and may be transported for life, or not less than seven years, or imprisoned not exceeding four years, and males may be once, twice, or thrice whipped in addition.

There must be a *forcible* taking: but the least degree of force, which may inspire fear, is sufficient, and the value is not material. Actual violence is not essential.

By the 7 and 8 George IV. c. 29, persons accusing another of any infamous crime, with intent to extort, and shall obtain money, &c. are guilty of robbery. And persons who send or deliver any letter or writing, demanding, with menaces, any chattel, money, or valuable security; or persons accusing, or threatening to accuse, another of any crime punishable with death, transportation, or pillory, or of any assault with intent to commit, or any attempt to commit rape, or of any infamous crime, with a view to extort money, &c. are liable to be transported for life, or for not less than seven years, or to be imprisoned for not exceeding four years, and, if males, to be once, twice, or thrice whipped, in addition.

By the 7 George IV. c. 64, persons appearing to any Court to have been active in the apprehension of felons, the Court is authorised to order the sheriff to pay reasonable expenses for exertion, and loss of time, besides the expenses allowed to prosecutors and witnesses.

And if any man is killed in endeavouring to apprehend any person charged with felony, the Court may order the sheriff to pay the widow, or children, or his father and mother, if he leave neither wife nor child, such sum as it

shall think proper. The Court is also authorised to order payment of the expenses which prosecutors incur, and to pay the prosecutor and witnesses such sums as seem reasonable and sufficient; even although no bill may be preferred or found, where persons *bonâ fide* have attended in obedience to any recognizance, or subpœna.

Stealing in a Shop, Warehouse, &c. is liable to transportation for life, or not less than seven years: or imprisonment with or without whipping for not exceeding four years.

Sacrilege, or the breaking and entering any church or chapel, and stealing therein, is punishable with death as a capital felony.

Forgery.—This crime consists in fraudulently *making* or *altering* any written document, with intent to defraud or injure any other person; and it is not material whether the object to injure or defraud be, or be not, absolutely effected. But the forged instrument must be used in some manner, as by tender, &c. with attempt to obtain money or credit upon its authority. For many years this offence was in very numerous cases punished recklessly with death;—but the statute 1 William IV. left only the following cases of forgery liable to capital *punishment, viz.*

1. *Forging* the *great seal, privy seal, privy signet*, or *royal sign* manual, or *uttering* the same, knowing them to be forgeries.

2. To *forge, alter*, or utter any *exchequer bill or debenture, India bond, Bank of England note, will, bill of exchange, promissory note, warrant order, undertaking for the payment of money*, or any *assignment, indorsement*, or *acceptance* of such instruments.

3. Making *false entries* in accounts of *public stock* at the Bank of England or South Sea House; making *fraudulent transfers; forging* the *transfer* of stocks belonging to *public companies; forging* or *uttering* forged *powers of attorney*, for the *transfer* of stock, or receiving the *dividends* thereon; and fraudulently personating the owner of any dividend or share, and *transferring* or *receiving* money by such means.

The forgeries *not* capitally punished, are as follow, *viz.*

1. *Endeavouring* to transfer stock, or receive dividends, by personating the owner, is punishable with transportation for life, or not less than seven years; or imprisonment for not more than four, nor less than two years.

2. Forging an *attestation* to a power of attorney, punish-

able with transportation for seven years, or imprisonment for not more than two years.

3. Clerks of the Bank, or South Sea House, fraudulently making out *dividend warrants*, transportation for seven, or imprisonment for not more than two years.

4. Forging or uttering *deeds, bonds, receipts, acquittances*, or *orders* for the delivery of goods; and fraudently acknowledging any *recognizance, bail, fine, recovery*, or *judgment* in the name of another, is liable to transportation for life, or not less than seven years, or imprisonment for not more than four, or less than two years.

5. Having unlawfully in possession, or receiving or purchasing *forged Bank of England notes*, or making or selling any moulds for making paper in imitation of bank paper; or engraving any imitation of the writing on bank notes, or using any plates so engraved, either in whole or in part, is punishable with fourteen years transportation.

6. The same with reference to *notes*, and *paper*, &c. of *private bankers*, transportation for fourteen or not less than seven years, or imprisonment not exceeding three nor less than one year.—And the same protection is given to the bills, notes, &c. of foreign states, and to recognised public companies abroad.

7. Knowingly to falsify *registers of baptisms, marriages, or burials*, or to *utter* such false entry; or wilfully to *destroy*, or *cause*, or *permit* to be *destroyed*, or *injured*, any such register; or to *forge* or utter any *marriage licence*, is punishable with transportation for life or not less than seven years, or imprisonment not exceeding four nor less than two years. But a minister may correct *in the margin* any error in the presence of the parents of children baptized, or of parties married, or of any two persons present at a funeral, or of the churchwardens, within one calendar month. And the correction must be certified in the copy sent to the registrar of the diocese.

8. Forging or counterfeiting any *stamp* or *die*, or exposing to sale any vellum, parchment, or paper, impressed with any such forgery, or to cut, tear, or get off any stamp, with intent to use the same a *second time*. And forging any plate stamp, or die, for any almanack, newspaper, or stage-coach licence, or knowingly to use such forged instrument:—And to counterfeit any mark or die on any *gold* or *silver plate*, or to sell or transpose any such mark, or knowingly to have any such in possession, is now punishable with transportation for life, or not less than seven

years, or imprisonment not exceeding four nor less than two years.

9. Forging *franks* on letters to evade the postage is punishable with seven years' transportation.

10. Forging *post office marks*, to avoid postage is a misdemeanor punished with *fine* and *imprisonment*.

11. Forging *licences* to *hawkers*, &c. a penalty of £300.

12. Forging a declaration of the return of premium on a policy of insurance, a penalty of £500 for the *first* offence, and transportation for seven years for the *second*.

13. Personating, or procuring to be personated any *officer*, *seaman*, or *marine*, entitled to pension, prize-money, &c. transportation for life, or not less than seven years.

Forgers and utterers may be tried where they are apprehended, or may be in custody. Principals in the second degree, and accessories *before* the fact are deemed principals in the first degree; and accessories after the fact may be imprisoned for any term not exceeding two years. Hard labour or solitary confinement may be added to imprisonment. The act does not extend to Scotland or Ireland; but it applies to all cases of *uttering* in England documents fraudulently made elsewhere; and the uttering of bills, &c. purporting to be payable in any other country.

OF MALICIOUS MISCHIEF.

Spring Guns.—By the 7 and 8 George IV. c. 18, to set, or cause to be set, any spring gun, man trap, or engine calculated to destroy human life, or inflict grievous bodily harm, with the intent to injure a trespasser, or other person, is a misdemeanor, and may be punished accordingly; but it is not illegal to set common traps to destroy vermin.

Setting Fire to Churches, Chapels, or other Buildings, is felony, and punishable with death.

Destroying Manufactures, in the loom or frame, or on the rack or tenters, or in any stage of manufacture, is felony, and offenders are liable to be transported for life, or any term not less than ten years, or to be imprisoned any term not exceeding four years, and, if males, to be once, twice, or thrice whipped, in addition; also, maliciously to destroy any threshing or other machine, is punishable with transportation for not less than seven years, or imprisonment, with or without whipping, for not

exceeding two years. And to break into any house, &c., with intent to cut or destroy manufacture, or utensils, is a capital felony.

Setting Fire to, or Unlawfully Destroying Mines &c.—By the 7 and 8 George IV., c. 30, persons maliciously setting fire to any mine of coal, are guilty of felony, and shall suffer death. And persons maliciously causing water to be conveyed into any mine, with intent to damage such mine, or hindering the working, or obstructing any passage of the mine, or destroying any machinery used in working it, may be transported for seven years, or imprisoned not exceeding two years; and, if males, to be once, twice, or thrice, whipped: and any malicious injury to any engine or means of working a mine, in a finished or unfinished state, is liable to the same punishment.

Destroying Ships, &c.—By the 7 and 8 George IV. c. 30, persons maliciously setting fire to, or destroying any ship or vessel, with intent to prejudice the owner, or damage any goods to the prejudice of the insurer, shall suffer death. And persons maliciously damaging vessels otherwise than by fire, with intent to destroy or render them useless, may be transported for seven years, or imprisoned not exceeding two years, and be once, twice, or thrice, whipped in addition. Persons exhibiting *false lights* or *signals*, with intent to bring vessels into danger, or doing any thing tending to the immediate loss or destruction of such vessels in distress, or destroying any part of a vessel in distress, or wrecked, or any articles belonging to such vessel, or impeding any person endeavouring to save his life, are guilty of felony, and shall suffer death.

Destroying Sea Banks, Locks, Flood-gates, Bridges, &c.—Is felony, punishable with transportation for life, or not less than seven years, or imprisonment, with or without whipping, for not exceeding *four* years. And to *injure* any such bank, &c., is punishable with transportation for not less than seven years, or imprisonment, &c., for not exceeding *two* years.

Destroying or *injuring* a *turnpike-gate*, or any appurtenance, is a misdemeanor, punishable with transportation, or fine or imprisonment, or both.

Destroying Trees, Shrubs, and Underwood, in parks, &c., or ground belonging to a dwelling-house, exceeding in value £1;—or growing in any other situation, above the value of £5, is felony, and liable to transportation for seven years, or imprisonment, with or without whipping, for not exceeding two years.

Destroying any tree, &c. growing any where to the value of 1*s.* incurs a penalty not exceeding £5, over and above the injury done. For a *second* offence, imprisonment, with hard labour, may be awarded, not exceeding twelve calendar months; and *two justices*, on a second conviction, may order public or private whipping after four days from the conviction. For a *third* offence, the offender may be transported for seven years, or imprisoned, with or without whipping, for not more than two years.

Destroying Vegetables in Gardens, &c.—Is punishable by a justice of the peace, with imprisonment, with or without hard labour, for not more than six calendar months; or else to pay the amount of the injury done, and any penalty not exceeding £20. A *second* offence is felony, and subject to transportation for seven, or imprisonment, &c., for not exceeding two years. Destroying vegetables, &c., in *open land*, is punishable with imprisonment, with or without hard labour, for not exceeding one calendar month, or the payment of twenty shillings beyond the injury done. A *second* conviction may be punished with imprisonment, &c. for not exceeding *six* calendar months, and *two* magistrates may order whipping in addition.

Destroying Fish Ponds.—Persons maliciously destroying the dam of any fishpond, or millpond, with intent to take or destroy fish, or so as thereby to cause the destruction of fish, or who maliciously put any lime or other noxious material in the pond, with intent to destroy the fish or the dam of any millpond, are guilty of a misdemeanor, and may be transported for seven years, or imprisoned for not exceeding two years, and be once, twice, or thrice, whipped.

Killing or Wounding Cattle.—Persons maliciously killing or wounding cattle, are guilty of felony, and may be transported for life, or for not less than seven years, or be imprisoned for not exceeding four years, and be once, twice, or thrice, publicly or privately whipped in addition.*

Slaughtering Cattle.—By 26 George III., c. 71, no person

* The word cattle is understood to mean horses, mares, colts, asses, and pigs, 9 George I., c. 22. And by 3 George IV., c. 71, persons wantonly and cruelly beating, or ill treating any horse, mare, gelding, mule, cow, heifer, steer, sheep, or other cattle, shall forfeit not more than £5, or less than 10*s.*, or be committed in default of payment for not more than three months. Prosecutions must be within ten days; and persons complaining frivolously must pay 20*s.* to the party complained against. *Bull-baiting*, it has been decided, is not *ill treatment* under this Act.

shall use any place for slaughtering cattle, not to be killed for butcher's meat, without a licence from the quarter sessions, or a certificate from the minister and churchwardens that the party is a fit person to be licensed; and if such person slaughter any cattle without such licence, or giving notice as the Act directs, he shall be guilty of felony. And if he destroy, burn, or rub with lime, or other corrosive matter, the skin or hide of any beast slaughtered by him, he is guilty of a misdemeanor.

Setting Corn, &c., on fire.—Persons maliciously setting fire to any stack of corn, &c., are guilty of felony, and shall suffer death; and setting fire to any crop, whether standing or cut down, or to part of a wood, &c., or heath, furze, &c., are guilty of felony, and may be transported for seven years, or imprisoned for not exceeding two years, and once, twice, or thrice whipped.

Destroying Hop-Binds.—Persons maliciously destroying hopbinds on poles, in any plantation, may be transported for life, or not less than seven years, or imprisoned not exceeding four years, and once, twice, or thrice, whipped in addition.

Tearing or Defacing Garments, &c.—By 6 George I., c. 23, if any person shall wilfully and maliciously tear, spoil, cut, burn, or deface the garments or clothes of any person passing in the public streets or highways, with intent so to do, he is guilty of felony, and may be transported for seven years. Such an offence may also be punished by fine, &c.

Stage Coachmen.—By the 3 George IV., c. 95, if the coachman, guard, or other person having the care of any stage, coach, &c., by intoxication, or wanton or furious driving, or any other wilful misconduct, on the public highway, injure or endanger any person or persons whatever in their lives, limbs, or property, every person so offending shall, on conviction, forfeit not less than £5, nor more than £10, for every such offence, and on default of payment, be committed to the common gaol or house of correction for not exceeding six nor less than three months. And this does not prevent the parties injured from bringing actions for compensation against the proprietors. Informations, where there are more than one proprietor, and such proprietors reside in different counties, must be laid against such of the proprietors as reside in the place nearest to which the offence is committed.

And by 7 and 8 George IV., c. 30, it is generally enacted, that where *any malicious* injury is done, of a private or a

public nature, for which no remedy or punishment is provided, a justice may order such compensation, not exceeding £5, as may appear reasonable; and, in default of payment, may commit the offender, with or without hard labour, for not exceeding two months. But this does not apply to trespasses under a supposed right to do what is complained of, nor to trespasses in hunting, fishing, or the pursuit of game.

Robbing Graves is not a felony, unless the shroud or grave-clothes be taken. But taking away the dead body for the purpose of dissection, is punished as a misdemeanor, with fine and imprisonment; and convictions have taken place for having a dead body in possession for dissection, knowing it to have been stolen. It is also a misdemeanor *not* to bury a dead body: and a master of a workhouse and a surgeon were convicted of a conspiracy to prevent the burial of one who died in the workhouse. *Rex* v. *Young*.

Civil Rights of Persons Convicted of Felony.—Offenders convicted of felony not punishable with death, and having endured the punishment to which they have been adjudged, such punishment has the effect of a pardon under the great seal as to *that* whereof the offender was so convicted: And offenders convicted of misdemeanor (except perjury or subornation of perjury,) having endured the punishment adjudged, are not, after the punishment, by reason of such misdemeanor, incompetent witnesses in any court or proceeding, civil or criminal.

ASSAULTS.

Common Assaults.—Where any person unlawfully assaults another, two justices of the peace may hear and determine such offence; and the offender, upon conviction, shall pay any fine not exceeding (with costs, if ordered) the sum of five pounds, which shall be paid to the use of the general rate of the county, riding, or division, in which the parish, township, or place, is situate; and if such fine, with costs, &c., is not paid within such period as the said justices appoint, they may commit the offender to the house of correction, for any term not exceeding two calendar months, unless the fine and costs be sooner paid;

but if the justices deem the offence not proved, or justified, or so trifling as not to merit punishment, and dismiss the complaint, they shall forthwith make out a certificate, stating the fact of such dismissal, and deliver such certificate, to the party against whom the complaint was preferred; and if any person against whom any such complaint is preferred, obtain such certificate, or have paid the whole amount adjudged, or suffered the imprisonment for non-payment, he shall be released from all further proceedings, civil or criminal, for the same cause.

Aggravated Assaults.—Where the justices shall find the assault complained of accompanied by any attempt to commit felony, or shall be of opinion it is a fit subject for prosecution by indictment, they shall abstain from adjudication, and deal with the case as they would have done before the passing of this Act.* But nothing herein shall authorise any justices of the peace to hear and determine any case of assault or battery in which any question shall arise as to the title of any lands, tenements, or hereditaments, or any interest therein or accruing therefrom, or as to any bankruptcy, or insolvency, or any execution under the process of any court of justice.

Assaults upon Persons in case of Shipwreck.—If any person assault and strike or wound any person lawfully authorised, on account of the exercise of his duty con-

* Namely, by binding over the parties complained against, to the following sessions; and either binding the complainant over to prosecute by indictment, or leaving him to *indict*, or bring an action, at his pleasure, or as the circumstances may require.

Persons *bound* over to prosecute, for assaults, felonies, &c. receive a notice from the magistrate, directing them to appear at the next sessions; which is done by attending at the Sessions House for the county, &c. with the witnesses to prove the case; the clerk will then and there prepare the indictment, the prosecutor and witnesses are then to be sworn, and then go into the room where the grand jury are sitting, and give their evidence; and if the bill be found a true bill, they must then attend at the Court where the case is to be tried, and take care to be in hearing when called, to give evidence against the parties accused. If they fail in this, their recognizances are *forfeited*, and will be returned into the exchequer, who may distrain for the penalty upon the goods and chattels of the party so failing to appear. If the bill is not found a true one by the grand jury, the parties *prosecuting* are at liberty to depart the Court; but the parties *prosecuted* for *assaults* or misdemeanors, who are under recognizances to appear, must see that their recognizances are properly discharged, or they and their bail may be liable to serious inconvenience and expense, afterwards. The clerk of the peace discharges the recognizances, for which he generally claims a small fee, but this, it is probable, will be shortly abolished.

cerning the preservation of any vessel in distress, or of any vessel, or effects wrecked, cast on shore, or lying under water, such offender is liable to be transported for seven years, or imprisoned, with or without hard labour, in the common gaol, for such term as the Court may award.

Other Assaults.—Where any person is convicted of any assault with intent to commit felony; or upon any peace or revenue officer in the execution of his duty, or upon any person acting in aid of such officer; or upon any person with intent to prevent the lawful apprehension of the party assaulting, or of any other person, for any offence for which he may be liable by law to be apprehended or detained; or of any assault committed in pursuance of any conspiracy to raise the rate of wages; the Court may sentence the offender to be imprisoned with or without hard labour, in the common gaol, for any term not exceeding two years, and (if it think fit) fine the offender, and require him to find sureties for keeping the peace.

And if any person shall unlawfully and with force hinder any seaman, keelman, or caster, from exercising his lawful occupation, or use any violence to him, with intent to deter him from exercising the same; or use any violence to any person, with intent to hinder him from selling or buying wheat or other grain, or use any violence to any person having the care or charge of any wheat on its way to or from any city, market-town, or other place, with intent to stop the conveyance, such offender may be convicted by two justices, and imprisoned and kept to hard labour, in the common gaol, for any term not exceeding three calendar months. Where any person is charged before any justice with any offence punishable by summary conviction, the justice may summon the party charged to appear before any two justices, at a time and place to be named; and if he shall not appear, (upon proof of due service of the summons) the justices may either proceed to hear and determine the case *ex parte*, or issue their warrant for apprehending such person, and bringing him before them; or the justice may (if he think fit) issue his warrant in the first instance, without any previous summons.

The prosecution for every offence punishable on summary conviction by virtue of this Act must be commenced within three calendar months after the commission of the offence. And nothing in this Act contained extends to Scotland or Ireland.

PROCESS IN THE COURTS OF CRIMINAL JURISDICTION.

Arrests.—The first proceeding in the courts of criminal jurisdiction, is by an *arrest*, which may be made either by warrant, by an officer, or private person without a warrant, and by hue and cry.

A *warrant* ought to be under the hand and seal of the justice; should set forth the time and place of making, and the cause for which it is made; and should be directed to the constable or other peace officer, (or to any *private* person by *name*,) requiring him to bring the party before any justice for the county, or the justice who granted it. A general warrant to apprehend all persons suspected, without naming any person, is illegal; and a warrant to apprehend all persons guilty of a crime therein specified, is no warrant at all, and will not justify the officer who acts under it: but if the warrant is properly penned (though the magistrate may exceed his jurisdiction) it will at all events indemnify the officer. A warrant from the Court of King's Bench extends all over the kingdom. But the warrant of a justice in one county must be signed by a justice in another, before it can be executed there; and it is the same where offenders escape into Scotland, from England, and *vice versâ*; or from Ireland into England or Scotland, or *vice versâ*.

Arrests by officers without warrant may be executed by a justice, who may apprehend, or cause to be apprehended, any person committing a felony or breach of the peace in his presence. The sheriff and coroner may apprehend felons within the county without a warrant. A constable may arrest any one for a breach of the peace committed in his view; and in case of felony actually committed, or a dangerous wounding, whereby felony is likely to ensue, he may arrest the felon, break open doors, and even kill the felon, if he cannot otherwise be taken. And *private persons* present when any felony is committed, are bound by law to arrest the felon, on pain of fine and imprisonment; and may justify breaking open doors, &c. as before.

Commitment and Bail.—By the 7 George IV. c. 64, where any person is taken, on charge of felony or suspicion of felony, before one or more justices, and the charge is supported by such evidence as, if not explained or contradicted,

shall raise a strong presumption of the guilt of the person charged, he shall be committed to prison; but if there is only one justice present, and the whole evidence does not raise a strong presumption of guilt, nor yet warrant the dismissal of the charge, two justices may admit to bail. But *before* they admit to bail, or commit to prison, they shall take the examination, and information upon oath of those who know the facts of the case, and put the same into writing; and bind by recognizance the witnesses to appear at the trial, and to prosecute and give evidence.

On charges of misdemeanor, also, the examination must be reduced into writing, and the prosecutor and witnesses bound over to prosecute or give evidence.

Coroners, upon inquisition for manslaughter or murder, must also reduce the evidence to writing, and bind persons to prosecute and give evidence.

MODES OF PROSECUTION.

THE next step towards the punishment of offenders, is their prosecution; and this is either by *presentment* or *indictment*.

A *presentment* is the notice taken by a grand jury of any offence from their own knowledge or observation, without any bill of indictment laid before them; as the presentment of a nuisance, a libel, and the like.

An *indictment* is a written accusation of one or more persons of a crime or misdemeanor, preferred to and presented upon oath by a grand jury; and is generally to be laid where the offence is committed; but there are exceptions to further the ends of justice, by enabling offenders to be tried sometimes in either of two or more *adjoining* counties; and sometimes in *any* county in England; so that where any felony or misdemeanor is committed within five hundred yards of the boundary of any county, or is *begun* in *one* county, and completed in another, the offence may be tried in either of the counties.

In any indictment or information for any felony or misdemeanor, where it is requisite to state the ownership of any property in the possession of more than one person, it is sufficient to name one, and state such property to

belong to the person so named and another, or others, as the case may be.

In any indictment or information for any felony or misdemeanor, with respect to any building, &c., maintained in whole or in part at the expense of any county, &c., it is sufficient to state such property to belong to the inhabitants of such county.

And in any indictment or information for any felony or misdemeanor, with respect to any workhouse, &c., or any goods or chattels for the use of the poor, &c., it is sufficient to state such property to belong to the overseers of the poor. With respect to materials, tools, &c., for making, &c., any highway, it is sufficient to aver such things are the property of the surveyor of the highways.

With respect to any building erected or provided for making materials, or repairing any turnpike-road, it is sufficient to state the property to belong to the trustees or commissioners of such road.

With respect to any sewer or other matter within the management of any commissioners of sewers, it is sufficient to state such property to belong to the commissioners.

No indictment or information shall be abated by reason of any dilatory plea of misnomer, or of want of addition, or of wrong addition of the party offering such plea, if the court shall not be satisfied (by affidavit or otherwise) of the truth of such plea.

No judgment upon any indictment or information, whether after verdict or outlawry, or by confession, default, or otherwise, shall be stayed or reversed for want of the averment of any matter unnecessary to be proved, nor for the omission of the words "as appears by the record," or of the words "with force and arms," or of the words "against the peace," nor for the insertion of the words "against the form of the statutes," instead of the words "against the form of the statute," or *vice versâ*, nor for that any person mentioned in the indictment or information is designated by a name of office or other descriptive appellation instead of his proper name, nor for omitting to state the time at which the offence was committed, in any case where time is not of the essence of the offence, nor for stating the time imperfectly, nor for stating the offence to have been committed on a day subsequent to the finding the indictment or exhibiting the information, or on an impossible day, or on a day that never happened.

nor for want of a proper or perfect venue, where the Court shall appear by the indictment or information to have had jurisdiction over the offence.

By 24 George III., c. 25, British subjects holding offices under his majesty, or the East India Company, may be punished for extortion and other misdemeanors committed in the East Indies, or any where abroad, upon an information in the Court of King's Bench. Such informations are tried by a special commission, consisting of one judge from each of the courts of Westminster, four peers, and six members of the House of Commons, who have power to proceed, and pronounce judgment according to the common law of England, and to declare the party convicted incapable of serving the East India Company.

When the grand jury have heard the evidence, if they think it a groundless accusation, they return "Not a true bill," or "Not found;" and then the party is discharged. But a fresh bill may afterwards be preferred to a subsequent grand jury. If they are satisfied with the truth of the accusation, they then indorse upon it "A true bill." And the indictment, when so found, is publicly delivered into Court.

By 1 Henry V., cap. 5, all indictments must set forth the christian name, surname, and addition of the state and degree, mystery, town, or place, and the county of the offender. But where a person, whose name is unknown, refuses to give it, he may be brought in person before the grand jury, and indicted as a person whose name is to the jurors unknown.

The *time* and *place* are also to be ascertained by naming the day and township in which the fact was committed; though a mistake in these points is not material, provided the *time* be laid previous to the finding of the indictment, and the *place* be within the jurisdiction of the Court; unless where the place is laid, not merely as a *venue*, but as part of the description of the fact. But sometimes the *time* may be very material, where there is any limitation in point of time assigned for the prosecution of offenders; as by 7 William III., c. 3, which enacts, that no prosecution shall be had for any of the treasons or misprisions therein mentioned (except an assassination designed or attempted on the person of the king,) unless the bill of indictment be found within three years after the offence committed; and in case of murder, the time of the death must be laid within a year and a day after the mortal stroke was given.

The *offence* itself must also be set forth with clearness and certainty. Thus, in treason, the facts must be laid to be done *treasonably and against his allegiance*, or the indictment is void. In indictments for murder, it is necessary to say that the party indicted, *murdered* (not *killed* or *slew*) the other. In all indictments for felonies the adverb *feloniously* must be used; and for burglaries also, *burglariously;* and all these to ascertain the intent. In rapes, the word *rapuit*, or *ravished*, is necessary, and must not be expressed by any periphrasis, in order to render the crime certain. So, in larcenies also, the words *feloniously took and carried away* are necessary to every indictment; for these only can express the very offence. Also, in indictments for murder, the length and depth of the wound should in general be expressed, in order that it may appear to the Court to have been of a mortal nature.

In indictments, the *value* of the thing which is the subject or instrument of the offence must generally be expressed. But in an indictment for stealing or destroying records, &c., or wills, or title deeds, it is not necessary to allege that the article is of value.

Informations.—Informations are of two sorts: first, those which are partly at the suit of the king, and partly at that of a subject; and secondly, such as are only in the name of the king.

By the 31 Elizabeth c. 5, no prosecution upon a penal statute, the suit and benefit whereof are limited in part to the king, and in part to the prosecutor, can be brought by any common informer after *one year*, nor on behalf of the crown after *two years;* and where the forfeiture is only to the king, no prosecution can be had after the expiration of two years.

Informations exhibited in the name of the king are also of two kinds; first, those which are filed *ex officio* by the attorney-general; and secondly, where the king is the nominal prosecutor, at the instance of some other person.

The objects of prosecutions filed by the attorney-general are such misdemeanors as tend to disturb or endanger the government, or bring into contempt the royal person and authority. Information so filed, must be tried by a jury of the county where the offence arises; and informations or indictments for misdemeanor, removed into the court of King's Bench by *certiorari*, are generally sent by writ of *nisi prius* into the county where the offence was committed,

and tried either by common or special juries, like records in civil actions.*

In all prosecutions for misdemeanors, by the attorney or solicitor-general, the Court, if required, will direct a copy of the information or indictment to be delivered, after appearance, to the party prosecuted, his clerk in court, or attorney, free of expense. And if prosecutions for misdemeanors by the attorney or solicitor-general are not tried within twelve calendar months next after the plea of "Not guilty," the Court, upon application on the behalf of the defendant, after twenty days' previous notice to the attorney or solicitor-general may authorise the defendant to bring on the trial, unless a *nolle prosequi* shall have been entered by the crown.

Summary Conviction.—In all cases where the sum adjudged to be paid on any summary conviction exceeds five pounds, or the imprisonment exceeds one calendar month, or the conviction takes place before one justice only, any person may appeal to the next Court of general or quarter sessions which shall be holden not less than twelve days after the day of such conviction; provided that such persons shall give to the complainant a notice in writing of such appeal, and of the cause and matter thereof, within three days after such conviction, and seven clear days at least before such sessions, and shall also either remain in custody until the sessions, or enter into a recognizance with two sufficient sureties, conditioned personally to appear at the said sessions, and to try such appeal, and to abide the judgment of the Court thereupon; and upon such notice being given, and recognizance entered into, the justice shall liberate such person.

PROCESS UPON AN INDICTMENT.

WHERE an offender is in custody before the finding of the indictment, he is immediately to be arraigned thereon. But if he have fled, or secreted himself in capital cases;

* In prosecutions in the name of the king, the plaintiff in his own cause cannot address the jury, it being only competent for counsel to do so.

or have not, in small misdemeanors, been bound over to appear at the assizes or sessions ; still an indictment may be preferred against him in his absence. And if it be found, then process must issue to bring him into Court.

The process on an indictment for petty misdemeanor, or on a penal statute, is a writ of *venire facias*. And if the party have lands in the county, whereby he may be distrained, a *distress infinite* may be issued till he appear. But if he hath no lands, upon his non-appearance, a writ of *capias* shall issue, commanding the sheriff to take his body, and have him at the next assizes ; and if he cannot be taken upon the first *capias*, a second and third shall issue, called an *alias* and a *pluries capias*.

But on indictments for treason or felony, a *capias* is the first process; and in the case of misdemeanors, it is now the usual practice for any judge of the court of King's Bench, upon certificate of an indictment found, to award a writ of *capias* immediately, to bring in the defendant. But if he abscond, and it is thought proper to pursue him to an outlawry, then a greater exactness is necessary ; and after the several writs, that is, the two writs of *capias* and *alias capias*, except in treason and homicide, when the first writ of *capias* alone is required, have issued in a regular number, according to the nature of the respective crimes, without any effect, the offender shall be put in the *exigent*, in order to his outlawry ; that is, he shall be exacted, proclaimed, or required to surrender, at five county courts ; and if he be returned *quinto exactus*, and do not appear at the fifth exaction or requisition, then he is adjudged to be *outlawed*, or put out of the protection of the law.

The punishment for outlawry is forfeiture of goods and chattels. But an outlawry in treason or felony amounts to a conviction and attainder of the offence charged in the indictment, as much as if the offender had been found guilty.

But such outlawry may be frequently reversed by writ of error, the proceedings therein being exceedingly nice and circumstantial ; and even the most single minute point be omitted or misconducted, the whole outlawry is illegal, and may be reversed : upon which reversal the party accused is admitted to plead to, and defend himself against the indictment ; and frequently an appearance is allowed to have that effect, and the outlawry abandoned.

Arraignment.—To *arraign* is to call the prisoner to the bar of the court to answer the matter charged upon him, when the indictment is read to him ; and he is asked whe-

ther he be guilty or not guilty. If he plead *not guilty*, the trial proceeds in due course; but if he stand mute, or will not answer to the indictment, the proper officer will enter a plea of "Not guilty," and this enables the Court to proceed as if the prisoner had pleaded not guilty.

The other incident to arraignments, exclusive of the plea, is the prisoner's actual confession of the indictment, on which judgment is recorded against him.

Turning King's Evidence.—In all cases of coining, robbery, burglary, housebreaking, horse-stealing, by several statutes, if any offender, being out of prison, discover two or more persons who have committed the like offences, and they are convicted thereof, the witness, in case of burglary or housebreaking, is entitled to a pardon of all capital offences, excepting murder and treason, and of the last also, in the case of coining. And justices sometimes admit an accommplice as *king's evidence;* upon condition that if such accomplice make a full and complete discovery of that and of all other felonies to which he is examined by the magistrate, and afterwards give his evidence without prevarication or fraud, he shall not himself be prosecuted; but the evidence of an accomplice must be corroborated by some other evidence, or it is not relied upon.

OF TRIAL.

When a prisoner has pleaded *not guilty*, the sheriff returns a panel of jurors from the county where the fact is committed. If the proceedings be before the Court of King's Bench, time is allowed, between arraignment and trial, for a jury to be impanelled, as in civil causes; and the trial is had at *nisi prius*, unless for any capital offence, which is always had at the bar of the whole Court, before commissioners of gaol delivery. The sheriff returns a panel of forty-eight jurors, to try felons for trial at the sessions; and it is usual to try felons there, soon after their arraignment. But it is not customary to try persons indicted of smaller misdemeanors at the same court in which they have pleaded *not guilty*, or *traversed* the indictment. They usually give security to the court to try at the next assizes or sessions; and every defendant in-

dicted for misdemeanor should give full eight days' notice of trial to the prosecutor before the assizes, if the trial is to be there; if at the sessions, it is usual to give four or eight days' notice. The jurors are sworn, as they appear, to the number of twelve, unless they are challenged by the prisoner, who is entitled to twenty peremptory challenges; that is, he may challenge twenty jurors, as they are offered to be sworn, without assigning any reason whatever; and as many more as he can give any sufficient cause for objecting to; and if these challenges exhaust the panel, a tales may be awarded to choose from the bystanders a sufficient number to complete the jury. *Aliens* are entitled to a jury of half foreigners, and no objection can be made to them for want of qualification.

No counsel shall be allowed a prisoner upon trial for felony, except treason, unless some point of law shall arise, proper to be debated.

In all cases of high treason, petit treason, and misprision of treason, by the 1 Edward VI. c. 12, and 5 and 6 Edward VI. c. 17, *two* lawful witnesses are required to convict a prisoner.

Attainder.—When sentence of death is pronounced, the inseparable consequence is *attainder.* The consequences of attainder are forfeiture and corruption of blood.

Forfeiture is two-fold; of real and personal estates. First, as to real estates; by attainder in high treason, a man forfeits to the king all his lands and tenements of inheritance, whether fee-simple or fee-tail, and all his rights of entry on lands or tenements which he had at the time of the offence committed, or at any time afterwards, to be for ever vested in the crown; and also the profits of all lands and tenements, which he had in his own right for life or years, so long as such interest shall subsist. This forfeiture relates backwards to the time of the treason committed, so as to make void all intermediate sales and incumbrances, but not those before the fact. But though, after attainder, the forfeiture relates back to the time of the treason committed, yet it does not take effect unless an attainder be had, of which it is one of the fruits: and therefore, if a traitor die before judgment pronounced, or be killed in open rebellion, or be hanged by martial law, it works no forfeiture of his lands, for he never was attainted of treason.

In petit treason and felony the offender also forfeits all

his chattel interests absolutely, and the profits of all estates of freehold during life; and after his death, all his lands and tenements in fee-simple (but not those in tail) to the crown for a very short period of time; for the king shall have them for a year and a day, and may commit therein what waste he pleases.

The forfeiture of goods and chattels accrues in every one of the higher kinds of offence; in high treason, or misprision thereof, petit treason, felonies of all sorts, *felo de se*, petit larceny. For *flight* also, on an accusation of treason, felony, or even petit larceny; but by the 7 and 8 George IV. c. 29, where any person is indicted for treason or felony, the jury shall not be charged to inquire concerning his lands, tenements, or goods, nor whether he fled for such treason or felony.

Another immediate consequence of attainder is the *corruption of blood*, both upwards and downwards; so that an attainted person can neither inherit lands or other hereditament from his ancestors, nor retain those he is already in possession of, nor transmit them by descent to any heir.

Reversal of Judgment.—If any judgment whatever be given by persons who had no good commission to proceed against the person condemned, it is void, and may be falsified by shewing the special matter, without writ of error.

So, if a man purchase land of another, and the vendor is convicted and attainted of treason or felony, previous to the sale, whereby such land is liable to forfeiture, the purchaser is at liberty, without writ of error, to falsify not only the time of the felony or treason supposed, but the felony or treason itself, and is not concluded by the confession or the outlawry of the vendor, though the vendor himself is concluded, and not suffered now to deny the fact which he has by confession or flight acknowledged. But if such attainder of the vendor be by verdict on the oath of his peers, the alienee cannot be received to falsify or contradict the *fact* of the crime committed, though he is at liberty to prove a mistake in *time*, or that the offence was committed after the alienation, and not before.

Writ of Error.—A judgment may be reversed by *writ of error*, which lies from all inferior criminal jurisdictions to the Court of King's Bench, and from the King's Bench to the House of Lords; for such errors as irregularity, omission, or want of form in the process of

outlawry, or proclamations; the want of a proper *addition* to the defendant's name, not properly naming the sheriff or other officers of the Court, or not duly describing where his county court was held; for laying an offence committed in the time of the late king, to be done against the peace of the present; and for many other similar causes. These writs of error, in cases of misdemeanors, are only allowed on sufficient cause shewn to the attorney-general; but writs of error to reverse attainders in *capital* cases are only allowed by favour; and not without the express warrant of the attorney-general.

Reprieve.—A reprieve is the withdrawing of a sentence for an interval of time, whereby the execution is suspended. This may be either before or after judgment.

Reprieves may be from the necessity of the case; as, where a woman is capitally convicted, and pleads her pregnancy. In case this plea be made, the judge must direct a jury of twelve matrons to inquire into the fact; and if they bring in their verdict *quick with child* (for barely *with child*, unless it be alive in the womb, is not sufficient), execution shall be stayed, till the next sessions; and from session to session, till either she be delivered, or prove not to have been with child at all. But if she once have had the benefit of this reprieve, and been delivered, and afterwards become pregnant again, she shall not be entitled to the benefit of a farther respite for that cause.

Another cause of regular reprieve is, if the offender become insane between judgment and award of execution; for though a man be sane when he commits a capital crime, yet if he become insane after, he shall not be indicted; if after indictment, he shall not be convicted; if after conviction, he shall not receive judgment; if after judgment, he shall not be ordered for execution, but must remain in custody at the king's pleasure. Or, the party may plead the king's pardon, an act of grace, or that he is not the same person who was attainted, and the like. In the last case, a jury is impanelled to try the identity of the person. And in these collateral issues, the trial shall be *instanter*, and no time allowed the prisoner to make his defence or produce his witnesses, unless he will make oath that he is not the person attainted; neither shall any peremptory challenges of the jury be allowed the prisoner.

Pardon.—The king may pardon all offences against the

crown or the public; excepting that, to preserve the liberty of the subject, the committing any man to prison out of the realm is, by the *Habeas Corpus* Act, 31 Charles II. c 2, made a *præmunire*, unpardonable even by the king. The king cannot pardon where private justice is principally concerned in the prosecution of offenders. Therefore, in appeals of all kinds (which are at the suit, not of the king, but of the party injured) the prosecutor may release, but the king cannot pardon. Neither can he pardon a common nuisance, while it remains unredressed, or so as to prevent an abatement of it; though afterwards he may remit the fine.

By 7 and 8 George IV. c. 29, sec. 69, the king may extend his royal mercy to any person imprisoned by virtue of *that Act*, although he may be imprisoned for non-payment of money to some party other than the crown; but otherwise he cannot pardon an offence against a penal statute after information, as the informer has then a property in his part of the penalty.

A pardon must formerly have been under the great seal; but now a warrant under the royal sign manual, countersigned by a principal secretary of state, has the effect of a pardon under the great seal, as to the felony for which pardon is granted; but it does not prevent or mitigate the punishment to which the offender might otherwise be lawfully sentenced on subsequent conviction for any felony committed after the granting of such pardon.

It is a general rule, that wherever it may reasonably be presumed the king is deceived, the pardon is void. Therefore any suppression of truth, or suggestion of falsehood, in a charter of pardon, will vitiate the whole.

The king may extend his mercy upon *what terms* he pleases: this is daily exerted in the pardon of felons, on condition of being confined to hard labour for a stated time, or of transportation for life, or for a term of years.

A pardon by Act of Parliament is more beneficial than by the king's charter: for a man is not bound to plead it, but the Court must *ex officio* take notice of it; neither can he lose the benefit of it by his own *laches* or negligence, as he may of the king's charter of pardon, which must be specially pleaded, and at a proper time; for if a man be indicted, and have a pardon in his pocket, and put himself upon his trial by pleading the general issue, he has waived the benefit of his pardon. But if a man avail himself thereof, as soon as by course of law he may, a pardon

may either be pleaded upon arraignment or in arrest of judgment, or in the present state of proceedings in bar of execution.

A pardon acquits an offender of all corporal penalties and forfeitures annexed to the offence; but nothing can restore or purify the blood when once corrupted, if the pardon be not allowed till after attainder, except an Act of Parliament.

Execution, in all cases, as well capital as otherwise, must be performed by the legal officer, the sheriff or his deputy. The usage is, for the judge to sign the calendar, or list of all the prisoners' names, with their separate judgments in the margin, which is left to the sheriff. As, for a capital felony, it is written opposite to the prisoner's name, "Let him be hanged by the neck;" which is the only warrant that the sheriff has; and if, upon judgment to be hanged, the criminal be not thoroughly killed, but revives, the sheriff must hang him again; for the former hanging was no execution of the sentence.

LAWS PECULIARLY AFFECTING ROMAN CATHOLICS.

The Roman Catholic subjects of the realm had been long subject to the operation of a great number of penal statutes, which in part placed them out of the pale of the constitution; but these restrictions have been happily removed by 10 George IV. cap. 7, which repeals all the Acts relating to declarations against the doctrine of transubstantiation; and enables Roman Catholics to sit in parliament upon taking the following oath:—"I, A. B., do sincerely promise and swear, that I will be faithful and bear true allegiance to his majesty King George the Fourth, and will defend him to the utmost of my power against all conspiracies and attempts whatever which shall be made against his person, crown, or dignity; and I will do my utmost endeavour to disclose and make known to his majesty, his heirs, and successors, all treasons and traitorous conspiracies which may be formed against him or them. And I do faithfully promise to maintain, support, and defend to the utmost of my power

the succession of the crown, which succession, by an Act entitled 'An Act for the further limitation' of the crown, and better securing the rights' and liberties of the subject,' is and stands limited to the princess Sophia, electress of Hanover, and the heirs of her body, being protestant; hereby utterly renouncing and abjuring any obedience or allegiance unto any other person claiming or pretending a right to the crown of this realm. And I do further declare that it is not an article of my faith, and that I do renounce, reject, and abjure the opinion, that princes excommunicated or deprived by the pope, or any other foreign prince, prelate, person, state, or potentate, hath, or ought to have, any temporal or civil jurisdiction, power, superiority, or pre-eminence, directly or indirectly, within this realm. I do swear that I will defend, to the utmost of my power, the settlement of property within this realm, as established by the laws: And I do hereby disclaim, disavow, and solemnly abjure any intention to subvert the present church establishment, as settled by law within this realm. And I do solemnly swear that I never will exercise any privilege to which I am or may become entitled, to disturb or weaken the protestant religion or protestant government in the United Kingdom. And I do solemnly, in the presence of God, profess, testify, and declare, that I do make this declaration, and every part thereof, in the plain and ordinary sense of the words of this oath, without any evasion, equivocation, or mental reservation whatever. So help me God."

The Act also contains the following additional particulars.

No Roman Catholic is capable of sitting or voting, until he has taken the oath.

Roman Catholics may vote at elections, and be elected, upon taking the oath. No Roman Catholic priest can sit in the House of Commons.

Roman Catholics may hold civil and military offices under his Majesty, with the exception of *regent*, lord high chancellor, lord keeper, or lord commissioner of the great seal of Great Britain or Ireland, or lord lieutenant, or lord deputy, or other chief governor, or governors of Ireland; or his majesty's high commissioner to the general assembly of the church of Scotland.

Roman Catholics may be members of lay corporations; but they cannot vote on ecclesiastical appointments; nor hold any offices in the established church, or ecclesiastical courts, or universities, colleges and schools; nor have any

presentations to benefices; and where any right of presentation to any ecclesiastical benefice belongs to any office in the gift or appointment of His Majesty, his heirs or successors, and such office shall be held by a person professing the Roman Catholic religion, the right of presentation shall devolve upon and be exercised by the Archbishop of Canterbury for the time being.

Roman Catholics are also prohibited from *advising* the Crown on the appointment to offices in the established Church, they are also liable to a penalty of £200, for acting in offices without having taken the oath; and must not assume any title to sees, &c.

Judicial or other officers are not to attend with the insignia of office, at any other place of worship than the established Church; and Roman Catholic ecclesiastics, officiating any where but in their usual places of worship, are liable to a penalty of £50.

Jesuits, &c. coming into the realm after the commencement of this Act, to be banished; but natural-born subjects, being Jesuits, may return into the kingdom, and be registered; and the principal secretaries of state may grant licences to Jesuits, &c. to come into the kingdom, or revoke the same; accounts of such licences to be laid before Parliament.

To admit any persons as members of such religious orders, is a misdemeanor; and persons so admitted may be banished; and if banished by His Majesty, and found here at large after three months, they may be transported for life; but these regulations do not extend to *female* societies.

LAWS AFFECTING DISSENTERS.

DISSENTERS, or separatists from the service and worship of the Church of England, not being Roman Catholics, were formerly burthened with many disabilities and restrictions, imposed by various statutes, from the time of Elizabeth to Charles the Second; but in the reign of William the Third, most of them were removed by the Act of Parliament called the Toleration Act; this was confirmed by 10 Anne, c. 2, which declared that no penal laws shall be enforced against Popish or other recusants, except the *Corporation* and *Test Acts*, provided they do not

deny the Trinity; and provided they take the oaths of allegiance and supremacy; or make a similar affirmation, being Quakers, and subscribe the declaration against Popery; that they attend some congregation certified to, and registered in, the court of the bishop or archdeacon, or at the county sessions; and that the doors of such meeting-houses should be unlocked, unbarred, and unbolted, under a penalty of not less than 40*s.* and not exceeding £20; and persons wilfully disturbing a minister or congregation, assembled for religious purposes, are liable to a penalty of 40*s.* on conviction at the next quarter sessions.—*52* George III. c. *155.*

Dissenting ministers were also required to subscribe the articles of religion, which only concerned the confession of the true Christian faith, and the doctrine of the sacraments, with an express exception of those relating to the government and powers of the church, and to infant baptism; or if they scrupled to them, they were bound by 19 Geo. III. c. 44, to profess themselves Christians and Protestants, and that they believed the scriptures to contain the revealed will of God, and to be the rule of doctrine, and practice.

By 53 George III, c. 160, the laws which excepted persons denying the Trinity from the benefit of the Toleration Act, were repealed in favour of the Unitarians; and recently, the Test and Corporation Acts have been also repealed, by 9 George IV., cap. 17; so that all persons are left at full liberty to act as their conscience shall direct them, in the matter of religious worship, as far as relates to secular concerns, and the eligibility to offices, &c., and they may now be considered as placed upon a general footing with the members of the established church; but no mayor or principal magistrate must appear at any dissenting meeting with the ensigns of his office, on pain of disability to hold that or any other office.

The following is the declaration now required to be signed by dissenters, on admission to any office, &c.

"I, A.B. do solemnly and sincerely, in the presence of God, profess, testify and declare, upon the true faith of a *Christian*, that I will never exercise any power, authority or influence which I may possess by virtue of the office of   to injure or weaken the protestant church, as it is by law established in England, or to disturb the said church, or the bishops and clergy of the said church, in the possession of any rights or privileges to

which such church, or the said bishops and clergy, are or may be by law entitled."

This declaration is to be made before the persons duly authorised to administer the oaths to be taken by members of the Church of England; and if not duly made, the election or appointment to the office to be void. In all appointments to offices under the Crown, this declaration must be made within six months, or the appointment to be void; and the declaration in such cases must be made and subscribed in the Courts of Chancery or the King's Bench, or at the quarter sessions of the county, &c. where the person appointed may reside

Naval officers below the rank of rear-admiral, and military officers below the rank of major-general in the army, or colonel in the militia, are not required to make this declaration; neither are the commissioners of customs, excise, stamps, taxes, &c, or any officer concerned in the collection of the revenue. Officers appointed abroad have, six months after their arrival in England, to subscribe the declaration.

An attempt was made this session (1834) to admit dissenters to the privileges of the universities of Oxford and Cambridge; but, although it passed the commons by a large majority, it was rejected in the lords by the enormous majority of 102.

LAWS AFFECTING THE JEWS.

In former times, the Jews and all their goods were at the disposal of the chief lord where they lived, who had an absolute property in them; and they might not remove to another lord, without his leave; and Henry III sold the Jews for a certain term of years to Earl Richard, his brother. They were distinguished from the Christians in their lives, and at their deaths; for they wore a badge on their outward garments, in the shape of a table, and were fined if they went abroad without such badges; and they were never buried within the walls of any city, but without the same; and more anciently were not permitted burial in the country. There were particular judges and laws by which their causes and contracts were decided here; and there was a court of justice assigned for the Jews. In the 16th of Edward I., all the Jews in England

were *imprisoned*, and compelled to redeem themselves for a vast sum of money; notwithstanding which, the same king banished them all three years after; and they remained in banishment 364 years, till, at the time of the great rebellion, they were again allowed to enter the kingdom.

Since then, it has been said, they are here by an implied licence, but, on a proclamation of banishment, they are in the same situation as *alien enemies*, on a determination of letters of safe conduct.

In the beginning of the last century, an instance occurred, where a Jew of immense riches turned out of doors his only daughter, who had embraced Christianity; and on her application for relief, it was held, he could not be compelled to afford her money, not being a subject of the realm; but to prevent such inhumanity in future, it was, by 1 Anne, c. 30, enacted, that if Jewish parents refuse to allow their protestant children a fitting maintenance, suitable to the fortune of the parent, the Lord Chancellor, on complaint, may make such order therein as he may think proper.

Since that period, custom, rather than law, has given to the Jews all the ordinary security of other residents of the state; and on some occasions, their peculiar customs have been taken into equitable consideration; as a plaintiff had leave given him by the Court to alter the *venue* from London to Middlesex, because all the sittings in London were on a Saturday, and his witness was a Jew, and would not appear on that day.

On another occasion, a Jew brought an action, and the defendant pleaded, that the plaintiff was a Jew, and that all Jews were perpetual enemies of the king and of our religion. But the Court held, that the Jew should recover as a vassal; and the plea of disability could not be maintained, until the king had prohibited them from trading, &c.

An attempt was made in the 26th of George II. to enable Jews to prefer bills of naturalization in Parliament, without receiving the sacrament, as ordained by 7 James 1 c. 2, and an Act to that effect was passed; but the popular clamour was so high against it, that it was repealed in the following session.

Since then, no legislative enactment has been made in their favour; but although the penal disabilities affecting Catholics and dissenters have been removed, and the house of commons has passed a bill to endow the Jews with

political rights, the house of lords has thought proper hitherto to refuse its assent to the proposition.

At present they are generally considered in the right of friendly *aliens*, and deemed capable of enjoying all the privileges of such persons, a detail of which will be found under the following head.

LAWS AFFECTING ALIENS.

The laws respecting aliens are generally divided into four heads, first, *aliens*, as such; secondly, *denizens;* thirdly, *naturalized subjects;* and fourthly, the *general effect* of the laws regarding these parties.

1. An alien *born* may *purchase* lands or other estates, but not for his own use, for the king is thereupon entitled to them. But aliens are enabled to lend money on the security of mortgages of estates in the West India colonies, and may have every remedy to recover the money lent, except foreclosing the mortgage, and obtaining possession of the land, which is positively prohibited by the statute. Nor can a *woman* alien be endowed, although the wife of a natural-born subject; nor a *Jewess*, who is the wife of a husband converted to the Christian faith. An alien may, however, acquire a property in goods, money, or other *personal estate*, or may hire a house for his habitation; *personal* estate being of a transitory and moveable nature, and this indulgence is necessary for the advancement of trade. Aliens may also trade as freely as other people, only they are subject to certain higher duties at the Custom House; and there are also some obsolete statutes prohibiting alien artificers to work for themselves in this kingdom, and making void all leases of houses or shops to aliens: but it is generally held that these were virtually repealed by 5 Elizabeth, cap. 7. An alien may bring an action concerning personal property, and make a will to dispose of his personal estate; but all these rights of aliens must be understood of *alien friends* only; for *alien enemies* have no rights nor privileges, unless by the king's special favour, in time of war.

Where it is said that an *alien* is one born out of the king's dominions, or allegiance this must be understood with some restrictions. The common law was absolutely so, with only a very few exceptions; so that a particular

Act of Parliament was necessary after the restoration, to naturalise children of English subjects, born in foreign parts during the rebellion. This maxim of law proceeded on a general principle, that every man owes *natural allegiance* where he is born, and cannot owe two such allegiances at once. Yet the children of the king's ambassadors *born abroad* were always held to be natural-born subjects, the father owing no *local* allegiance to the foreign prince. Also, all the children of the royal family are considered as natural-born subjects, wherever they may be born; and indeed wherever the father is a natural-born subject of the realm, the children are now always considered as natural-born subjects.

By 56 George III., cap. 86, aliens not departing the realm when ordered by proclamation, might be committed to gaol, for any time not exceeding one month for the first offence, and not exceeding twelve months for the second, or any subsequent offence; and they might be conveyed out of the kingdom, unless sufficient reasons for not complying with the proclamation were assigned to the privy council. Masters of vessels were to declare in writing the number of aliens on board, with their names and descriptions, under a penalty of £10, for each omission; and aliens, on their arrival or departure, were to give in their names, descriptions, and occupations; but none of these regulations apply to mariners employed in the navigation of the ship. The Act contained a variety of other regulations, chiefly with reference to those aliens who arrived from France in consequence of the political dissentions; but although it was continued in force until the seventh of George IV., it has since been permitted to expire; and the only condition of residence here by aliens, is a registry of their names, abode, and occupation, to be renewed *half-yearly;* and aliens who have resided here seven years without having ever left the kingdom are exempt from all restrictions.

2. A *denizen* is an alien *born*, but who has obtained letters patent from the king to make him an English subject. The denizen, however, holds only a *middle* rank between an alien and a natural-born subject; he may take lands by *purchase* and *demise*, which an alien may not; but he cannot take by *inheritance;* for his parent, through whom he must claim, being an alien, had no heritable blood, and therefore could convey none to the son. And upon a like defect of heritable blood, the issue of a denizen born *before* denization could not inherit to

him; but his issue born *after* might do so, to the *exclusion* of that born before. But all *natural-born* subjects may inherit as heirs to their ancestors, though those ancestors were aliens, if the persons claiming are in being at the death of the ancestor; and the estate is divested from daughters in favour of afterborn sons. A denizen is not excused from paying the alien's duty, and some few other mercantile burthens; nor can a denizen be a member of the privy council, or of either house of parliament; or hold any office of trust civil or military; or be capable of taking any grant of lands, &c. from the crown.

3. *Naturalization* can only be performed by an act of Parliament; for by this an alien is put in the same state as if he had been born in the king's liegeance, except that, like the denizen, he is incapable of being a member of the privy council or parliament, or holding offices, grants, &c.

These are the principal distinctions between *aliens, denizens,* and *natives;* distinctions which it has been frequently endeavoured to lay almost entirely aside by one general naturalization act for all foreign protestants; an attempt carried into execution by 7 Anne, c. 5; but this, after three years' experience, was repealed by 10 Anne, cap. 5, except a clause in it for naturalizing the children of English parents born abroad. However, every foreign seaman who serves two years in time of war, on board a British ship, is absolutely naturalized, with the restrictions before mentioned as attaching to denizens, &c. And all foreign protestants and Jews, upon residing seven years in any of the American colonies, without being absent above two months at a time, and all foreign protestants serving two years in a military capacity there, or taking the oath of allegiance, &c. may be naturalized with the before-mentioned restrictions.

4. An *alien enemy* coming into the kingdom, and taken in war, is liable to execution under *martial law,* and not by indictment.

An alien indicted of felony or misdemeanor is entitled to be tried by a jury of one half foreigners, who cannot be challenged for want of *freehold* qualification.

And one foreigner may arrest another in England for a debt which accrued while both were resident abroad, though the laws of that country might not authorise arrest for debt; as the *remedy* must be pursued agreeable to the law as it is here, although the contract by which the debt was incurred must be interpreted agreeably to the law of the country where it became due.

THE PARISH ATTORNEY.

Every man placed in society as a housekeeper, may render himself suddenly liable to the discharge of many active duties in the various parochial offices, for the proper execution of which his previous pursuits and habits may not in any way have qualified him. In such instances, and they are numerous, much mortification has been endured by the parties, in the natural and laudable anxiety to act with justice to others and repute to themselves, when they are hastily obliged to apply to imperfect sources of information, or reduced to the necessity of following bad precedents, and thus perpetuating existing abuses. To this want of knowledge of the best means of proceeding, is generally to be attributed the consent of so many to follow in the beaten track of abuses in which age is the only recommendation; and though it requires courage as well as knowledge to return from the wrong to the right path, yet, without an acquaintance with the means, neither courage nor integrity can ever hope to accomplish the desirable end.

In the following pages, we hope the reader will find all that is really necessary to guide him through the ordinary duties of any parochial office, with satisfaction to himself and the approbation of his fellow citizens, divested of such technicalities as might only perplex, and disencumbered of the endless repetitions with which some even of our best legal writers have thought it necessary to enlarge their works.

THE CHURCHWARDENS

Are officers of great antiquity, deriving their authority from the common law; they were anciently called church-reeves, and were originally appointed to superintend such matters as related merely to the church, and the care of the ecclesiastical property of the parish; and occasionally to be the legal representatives of the parish at large, as

its temporal officers in ecclesiastical affairs. They had also assistants, called "synodmen," corrupted in modern times to "*sidesmen*," who were to present offences detrimental to the interests of morality and religion to the provincial council, or episcopal synod. This office of sidesman still exists in some parishes; the right of election being in the minister and parishioners, except some special custom prevail. The duty of the churchwardens has been much increased by the introduction of the poor-laws, and the various statutes which have followed as a consequence of their enactment.

THE LIABILITY TO SERVE.

The office of churchwarden is very general, and the obligation to discharge its duties imperative. The parishioners may choose whom they please; and there exists no disqualification at present on account of religious opinions, except to persons professing the Jewish faith: the Roman Catholics, by 10 George IV. c. 7, being eligible, provided they subscribe to the oath set forth in sec. 2, of that statute, as to every other situation, except as to offices belonging to the Church of England.

But several classes have a right to claim an exception from serving this office, if they think proper so to do, although not disqualified,—such as peers, persons in holy orders, members of parliament, the king's ordinary servants, practising barristers and attorneys, clerks in the courts of Chancery, King's Bench, Common Pleas, and Exchequer, where the duties are discharged in person;—physicians of the Royal College, practising in London and its suburbs, surgeons free of the corporation, and generally all physicians and surgeons who are practising in places where there are a sufficient number of other persons to execute the office. *Apothecaries* regularly apprenticed, practising in any part of the realm; *Dissenting ministers*, qualified according to 1 William and Mary, c. 18, called the *Toleration Act;* which act, s. 7, extends the exemption from *all* parochial offices to dissenters, who scruple to take the necessary oaths, provided a parishioner as deputy is produced, and approved by the ordinary. The Catholic is also entitled to exemption on the same terms, by 10 George IV. c. 7. *Commissioners*, officers of customs, and all persons *engaged* in the collection of the revenue, are also exempt from parochial offices; as well as officers in the army and navy on *full pay;* non-commissioned officers

and privates, from their enrolment to their discharge; registered seamen were also exempt, but as the registration enacted by 9 & 10 William III. is repealed, the exemption cannot follow as a consequence of their registration.

Justices of the peace are said to be exempt by reason of their magisterial character; but it would seem rather to be a disqualification than an exemption, as the offices are utterly incompatible, where they relate to the same locality, the accounts of the overseer being subject to the examination and passing of the magistrate. *High* constables are exempt during the continuance of their office; as are also visitors and deputy-visitors of workhouses of united parishes and townships in incorporated districts.

Persons living out of the parish may claim an exception, although they may occupy land within its limits; but a partner in a house of business, which is carried on in the parish, cannot claim an exception because he does not reside in it, unless he is actually serving an office in the parish where he does reside. The matriculated servants of Oxford and Cambridge are said to be exempt; and the king may generally grant an exemption from all offices, where such exemption is necessary for the public service.

THE ELECTION

Of churchwardens is generally on the Tuesday in Easter week, the selection of that week being made in the canon law. It is usually conducted in the church, as the largest and most convenient place. Those who are then in office frequently offer two persons to succeed them; but the legal mode of electing them is by a show of hands, or by a poll, if demanded. The poll, where any custom prevails, is to be regulated by the custom; but where there is no such general custom, the majority of the electors present when the poll is demanded, may fix any reasonable time for its commencement and duration; only the proceedings of the first day must be regularly *adjourned* to the time appointed, and the poll must be concluded in the course of the Easter week. In some places, only *one* churchwarden is appointed; and, by custom,* the appointment is good.

By the canons of the church, the churchwardens are to be chosen by the minister and parishioners; but where they do not agree on both, the parish may choose one,

* *Custom,* in this case, means a practice of which *no living man* remembers any thing to the contrary.

and the minister the other; and a curate may nominate in such case for the minister, if the latter is absent. Sometimes the custom is for the minister to name one, and the old churchwardens the other; in some cases, the lord of the manor appoints; and where persons entitled to a *joint choice* cannot agree, the ordinary of the diocese may take those presented by either party.*

Where there is no poll demanded, the majority of the parishioners at the vestry properly convened, will bind the rest of the parish.

The election is completed by swearing the churchwardens into office; which is done at the first visitation after their election held by the bishop of the diocese, or his representative. Until they are sworn in, they have no right to act, and they should be particularly cautious not interfere either in the receipt or payment of any monies on account of the office.†

The oath of the churchwarden is as follows:

"You shall swear truly and faithfully to execute the office of churchwarden within your parish: and, according to the best of your skill and knowledge, present such things and persons as to your knowledge are presentable by the laws ecclesiastical of this realm. So help you God, and the contents of this book."

* Where customs by accident are interrupted, the canons of the church regulate the appointment. Sometimes a local act authorises the parishioners to choose both churchwardens; sometimes they have by custom been elected by select vestries, to the exclusion of the parishioners in general; but this *custom* has been roughly handled of late; many parishes have successfully combated the pretension, and some select vestries have had the good sense to abandon the usurpation without a contest.

Select vestries are, however, recognised by 59 George III. c. 134, called Sturges Bourne's Act, and when adopted under that statute, the choice of the churchwardens is in the select vestry, without the interference of the parish; but then the parish appoints the select vestry, and may so far control its affairs.

One of the churchwardens of the new churches, built under 58 George III. c. 45, is to be chosen by the incumbent, and the other by the parishioners. The churchwardens of churches built under 1 and 2 William IV., c. 30, are to be chosen, one by the incumbent, and the other by the renters of pews. And where a new parish is separated from an original parish, and endowed with a chapel of ease, the incumbent is to choose one, and the vestry the other churchwarden.

† If the same churchwarden be re-elected for a second year, he must be equally careful not to meddle with the business or accounts of the second year, until he is regularly re-sworn into his new office.

The oath of the sidesman is:

"You shall swear that you will be assistant to the churchwardens in the execution of their office, so far as by law you are bound. So help you God."

No fees are demandable on administering the oath, and persons properly elected, who refuse to take the oath, may be excommunicated; but as excommunication has now lost most of its terrors, and the refusal to take the oath, would be a refusal to enter upon the duties of the office, the ordinary mode of compelling the churchwardens to act, is an application to the Court of King's Bench; which also will interfere by writ of *mandamus* to compel the choice of churchwardens, or the swearing them into office when chosen; and by an information *quo warranto*, when churchwardens are chosen or sworn in improperly, or in cases of contested elections.

THE DUTIES.

Of the churchwarden, as enacted by statutes, and set down in the canons, have in some degree become obsolete; such as the presentment of fornicators, common swearers, tipplers, and persons who do not come to the parish church, or do not frequent some other place of religious worship, &c., &c. In these cases, though the ordinances are not expunged, the manners of the age have virtually repealed them.

The ordinary duties of the churchwardens are to have everything ready for the performance of divine service, the administration of the sacrament, and other religious ceremonies of the established church; for which purpose they must provide a book of common prayer, a large Bible, and a book of the homilies; a font of stone, where baptism is administered; tables for celebrating the holy communion, which, in time of divine service, are to be covered with a "carpet of silk, or other decent stuff," and with "a fair linen cloth, at the time of ministration;" they are to provide "a comely and decent pulpit," and to set up the ten commandments at the east end of the church or chapel; and at every communion to provide, at the expense of the parish "a sufficient quantity of fine white bread, and good and wholesome wine, in a clean, sweet, standing pot, or stoop of pewter, if not of purer metal." They should also provide a chest, with three keys, for the reception of alms, to be distributed quar-

terly, or oftener, in the presence of six of the chief persons of the parish; among their " most needy neighbours;" but this charitable regulation has become almost as obsolete as many that deserved no better fate.

The bells, as appurtenances of the church, are under the care of the churchwardens, who hold the custody of the keys of the belfry; but they are admonished by the canons " to take especial care they are not rung on *superstitious* or *factious* occasions, but only on times and occasions allowed by the minister and themselves." The churchwardens, however, may ring them when they please.

They are also to provide a book from the king's printer, of parchment or durable paper, at the parish cost, in which the rector, vicar, curate, or officiating minister, must enter the day and year of every *christening*, *wedding*, and *burial;* the entries to be numbered progressively, from the beginning of each book to the end; the pages of the book must also be progressively numbered, from page 1 to the end. This book is to be kept in a dry, well-painted iron-chest, either in the church or chapel, or in the residence (if in the parish) of the rector or officiating minister. The church-wardens should also (if appointed to do so by the rector, &c.) annually make fair copies of the entries in the register-book, two months after every 31st of December, to have them verified by the rector, &c. to attest the verification, to sign, and send them by post to the registrar of the diocese. If the rector, &c. refuse to verify and sign these copies, the churchwardens must certify the default to the registrar. The churchwardens, must also indorse and sign all letters containing the copies forwarded to the registrar; and if the minister or churchwardens are negligent in these matters, the bishop may proceed against them. Where a recently consecrated church or chapel is extra-parochial, the registers must be kept in the parish church, or the church of some adjoining parish. 6 George IV. c. 92.

The first act the churchwardens are required to perform is to survey the church, church-yard, and utensils; take an account of what repairs are wanting, estimate the amount, and levy an equal rate for the requisite expenditure. Any ordinary repairs are often done without the sanction of the parishioners, but it is now usual, and perhaps necessary, to obtain such sanction. But if the churchwardens make *new additions* to the fabric, the church-yard, or the utensils, without the express consent of the major part of the parishioners convened for that purpose, under 58 George III.

the parishioners may refuse to pay, and the rates would be null and void.

If additions are required in the *interior* of the church, such as a generally new disposition of the pews, the building of a new gallery, &c. the consent of the *ordinary* is also requisite, without which the rate would be informal, and could not be recovered of those who refused to pay—but the churchwardens may make any trifling alteration, where no private rights are interfered with, nor any parishioners incommoded, without an application to the ordinary for his consent.*

A resolution of the vestry on the subject of such repairs, &c. is required by 58 George III. s 69, to be entered in the vestry books, and may be in the following form

"At a public vestry of this parish, holden this day of in the year in pursuance of a public notice for that purpose given, it was resolved that it is necessary and will be proper to (*here state the alterations, additions, &c. recommended,*) and the churchwardens are desired to cause the same to be done with as little delay as possible."

The authority of the churchwardens does not extend to the defacing or demolishing monuments, coats of arms, pennons, hatchments, &c, painted or placed in the church; and they are bound to grant leave to repair vaults, monuments, &c.

It is part of the churchwarden's duty also to keep the church-yard in decent condition, and the fences, gates, &c. in sufficient repair.

CHURCH RATE.

Churchwardens are not invested with any authority to make rates *themselves* for the repairs of the church or chapel; but the duty is imposed them by various statutes in the case of building new churches, or enlarging old ones under such statutes.

But, generally, church rates must be made with the consent of the majority of the parish, after public notice of

* The consent of the incumbent is requisite as well as of the ordinary and the parishioners, for any alteration in the *chancel*, which the churchwardens are bound to see does not become dilapidated, and to present if out of repair, although they are not personally charged with the repair of it.

the intention to make a rate, and requiring the attendance of the parishioners in vestry for such special purpose. This notice must be read in the church, &c. during or immediately after divine service, and affixed, written, or printed on the principal door of the church, &c. three days at least before the day of holding the vestry. The following form of notice may be used :

Parish of

" The inhabitants and renters of this parish are desired to take notice that a public vestry will be held on next, the instant, at , at o'clock in the —— noon of that day, to take into consideration, &c. &c. *(specifying the purpose or purposes of the meeting.)*

" Dated this day of 1834

" A. } Churchwardens."
B. }

It is also usual, for further publicity and warning to the parishioners, to toll the bell for half an hour before the time of meeting; and after these precautions, whatever rate is made by the greater part of the parishioners who attend the *meeting*, provided no poll is demanded ;* and when confirmed by the archdeacon or ordinary, if it amount to more than £10 it may be levied by process in the ecclesiastical courts, on those who refuse to pay; but the recusants have also the right of appeal to the same tribunal, if they are aggrieved by an inequality of assessments, improper or exorbitant expenditure, &c.

The rates must be assessed on the *tenant ;* and even upon occupiers of land within the parish, although such occupiers reside out of it :—and if the amount is less than £10, the party making default may be summoned by the church or chapelwarden before a justice of the peace for the district, who may issue a warrant for levying the sum due, with all costs and charges, by distress and sale of the offender's goods ; (53 George III. c. 127 ;) but the costs of a distress for a church rate not exceeding £20, are limited by 7 & 8 George IV. c. 17, to those granted by 57 George 3. c. 93, for arrears of rent under £20. And goods and chattels may be seized not only in the parish, but in any other parish, &c. in the same county, riding, division, or jurisdiction, after seven days from the demand of the rate; and if sufficient distress cannot be made in the same

* Of course, when a poll is demanded, and every parishioner has the opportunity of voting, the majority on the poll binds the parish to the payment of the rate, or rejects it, as the case may be.

county, on oath before a justice of the peace for any other county, &c, in which any of the goods, &c. of the defaulter may be found, they may be distrained and sold, as if they had been found in the same parish, &c. for which the rate was made. But an appeal lies to the quarter sessions for all rates so demanded which exceed £10; and, on notice of appeal, no distress warrant can be granted, until the appeal is determined.

The granting of a church-rate for repairing the church may be in the following terms:—

"We the undersigned, churchwardens, overseers of the poor, and parishioners of the parish of in the county of and diocese of whose names are hereunto subscribed, do hereby this day of in the year 18 at a vestry meeting for such purpose assembled, rate and tax all and every the inhabitants of the aforesaid parish hereafter mentioned, for and towards the repairs of the church of the said parish, in the several sums following, that is to say

A. B. for the tenant now in his occupation	0	0	0
C. D. for lands now held by him in this parish .	0	0	0
E. F. for house No. , Street	0	0	0

M. N. } Churchwardens.
O. P. }

G. H. } Overseers.
I. K. }

R. S. }
T. W. } Parishioners."
X. Z. }

All persons have a right to vote for church-rates who pay them, even although a previous rate be unpaid; the *liability* to pay being the qualification, although it is often attempted to suffer persons to be in arrear, for electioneering purposes, to dispute their right of voting; but persons *excused* from the payment of church rates on any account have no right of voting upon them.

THE SEATS

Of the church which are repaired at the charge of the parish are in the disposal of the churchwardens, for the time being, as they become vacant; although it is sometimes said on the authority of some now obsolete precedents that the churchwardens are only the officers of the

ordinary, or bishop, and therefore subject to his control, while they are not liable to the authority or the interference of the parishioners. Custom, however, in some large places, varies the exercise of the right, and such customs would probably be deemed legal.

The general law, and the reason of the case jointly proclaim that every household parishioner has a RIGHT to a convenient seat in the parish church; as the pews are the *common property*, and for the *common use* of the parishioners, without either particular purchase, or ordinary payment of rent; and this although the parishioner be *not* rated to the church; and the churchwardens may be cited if they refuse or neglect to comply with an application for a seat; and condemned in costs if they fail to assign a sufficient cause; but this course is rarely adopted, and generally would be of little avail if it were; for where the parish churches are crowded it would be impossible to seat all; and where they are not well attended there is ample room for those who choose to go. Generally speaking, however, the churchwardens are bound to provide accommodation for all, as far as the capabilities of the church extend; neither accommodating the more influential beyond their reasonable wants, nor excluding the poorer inhabitants from the most convenient situations that can be afforded them.

As there is no permanent legal property in the pews, the granting of a seat by the churchwardens does not convey any permanent and exclusive right; though it has generally the effect of conferring a permanent occupancy. On occasions of emergency, however, the churchwardens may make fresh arrangements, and fresh dispositions of the pews; where the increase of the parish, or the decrease of particular families renders such measures evidently reasonable, useful, and necessary; and much is left to their good sense and discretion in assigning seats to new applicants; while it is generally understood that the older occupiers shall neither be disturbed nor incommoded without some good reason, or urgent necessity.*

The churchwardens have no right to sell seats; nor can they permit a parishioner to build a pew on condition

* Some seats in many churches have been appropriated by immemorial prescription, or by faculties granted, perhaps originally without either reason or right, but the custom has become law, and they are not within the authority of the churchwardens. In other cases usage has vested the distribution of the seats, in the vestry, or a number of parishioners, in which cases also the usage may be considered law.

that he pay for it; and all payments for building new, or repairing old pews, in a parish church are illegal, where a faculty has not been previously obtained from the ordinary.

The statutes of 58 George III. c. 45,—59 George III. c. 134,—and 1 & 2 Wm. 4. c. 48, require the churchwardens to collect the rents of seats and pay the minister, clerk, and repair the building, and maintain good order in all the churches built under those statutes, while in office, and to continue in office until others are chosen. By 1 & 2 William IV. c. 38, the churchwardens of churches built under that statute, are to collect rent, defray all expenses of repairs, clerk or beadle, pew openers, &c. and pay over the residue to the minister in addition to any other endowment. And by 59 George III. c. 134, churchwardens of any parish in which the church or *chapel* is built under that act, without a division, are bound to execute all such things, as separate churchwardens would have been bound to do under that statute, if a division had taken place.

Sometimes the *sequestration* of *benefices* forms a part of the duty of the churchwardens, during vacancies occasioned by the death of the incumbent, the dilapidation of the chancel, for the repairs of which the benefice is liable, or the decay of the minister's house, or on account of debts incurred by him. On such occasions the churchwardens may apply to the chancellor of the diocese, who will give them an authority to take the benefice and its profits into their care; on which they must publish the sequestration during divine service in the church, and manage the proceeds in trust for the next incumbent. It is their duty then to cultivate the glebe land, (if there be any) in the best manner, and dispose of the produce at the best market, to repair the house, maintain fences, and discharge all necessary obligations; they must also provide a fit curate, approved of by the bishop, and pay him out of the proceeds of the benefice. They must also take care not to suffer any dilapidations, while they receive the profits; nor must they meddle with any timber, &c. on the estate unless necessary for repairs; and as soon as a new minister is instituted they must account for the profits, &c. with which if not satisfied, he may cite them before the ordinary, who has final judgment.

On sequestrations for the satisfaction of *a debt*, the churchwardens are bound to carry the writ into immediate execution on the receipt of it, and to take the profits, &c. until the debt is satisfied.

Various other duties are imposed upon churchwardens

under statute, in which they are made the agents of executing or enforcing the several enactments, the most material of which are as follows:—with respect to

APPRENTICES.

By 43 Elizabeth, and 18 George III. c. 4, churchwardens and overseers may compel certain persons in their parishes to take apprentices; and they may also compel the children of poor persons to be bound apprentice, if boys, till they are twenty-one, and if girls until that age, or marriage. By 2 and 3 Ann, c. 6, they may, with the consent of two justices, apprentice poor boys to the sea service when they are ten years old:—and by 28 George III. c. 48. and 56 George III. c. 139, churchwardens and overseers with the consent of two justices, may bind boys, not under nine years of age, to chimney-sweepers, until they are sixteen, if the consent of the parents be obtained, or if their parents are chargeable to the parish, or exist by begging.

THE POOR.

The churchwardens being appointed by 43 Elizabeth, c. 2 overseers of the poor for the purposes of that Act, continue overseers of the poor during the period of their office; and where no overseers are appointed, the churchwardens may receive paupers removed from other parishes: but they cannot do any act which is required to be done by the churchwardens and overseers, until, the overseers are appointed, and join in the execution with them. In their *joint duty*, they are to make *assessments* for the relief of the poor; to level the penalties incurred by magistrates who neglect to appoint overseers every year; and apply them to the relief of the poor; to keep a register of the names of all persons receiving parochial relief, the date of their first relief, with the cause, &c., to levy under a magistrate's warrant for the use of the poor, the penalties for servants, &c.; gaming in public houses; for servants carelessly firing houses; for hawking spirituous liquors; selling corn by wrong measures; adulteration of meal and flour by millers, and not having true balances; proper weights; table of prices, &c.; for false weights or false packing of butter and cheese; for butchers killing or selling meat on the Sunday; for tippling and drunkenness; for unlawfully exposing goods to sell on a Sunday; for bakers exercising their business out of lawful hours on Sunday; for offences against the Game Laws; for

making and selling, or throwing fire-works; and for unlawful pastimes on the Lord's Day; to apprehend hawkers trading without a licence; and to take the penalties on conviction; and to sign certificates for out-pensioners of Greenwich, residing in the parish, for the recovery of their pensions, &c.

MILITIA.

By 42 George III. c. 90, churchwardens or overseers, with the consent of the parishioners, at a meeting convened for the purpose, with three days notice, may offer to provide volunteers without ballotting, at any sum not exceeding £6 a man, and defray the expense by a rate on the parish. And ballotted men, not worth £500, are to be paid half the price of the volunteers by the churchwardens, &c. out of such rate, or order of two deputy lieutenants; or out of the poor rate, if there be no rate made for the purpose, on penalty of £10 on the churchwardens or overseers; one half to be paid to the person balloted. The churchwardens may also provide volunteers for the *local militia*, to be raised by the parish, at two guineas bounty each, to be defrayed by a rate made in vestry, 52 George III. c. 38.

DEAD BODIES

Cast on shore, are to be decently interred by the churchwardens and overseers, on penalty of £5 on the parties offending; but the treasurer of the county is to reimburse the expense of interment, with a reward of 5*s*. to the party giving notice of the body within six hours after the discovery, 48 George III. c. 15.

HIGHWAYS AND COUNTY RATE.

On the 22d of November, yearly, or on the Monday if Sunday be the 22d, the churchwardens, overseers, constables, surveyors, and assessed householders, must meet at the church, or other usual place, at eleven in the forenoon, and make a list of at least *ten* persons living in the parish, who are qualified to serve as surveyors of the highway, for the following year, under penalty of 40*s*. They must also see the accounts of the old surveyors regularly produced, and properly verified at the end of the year.

The churchwardens and overseers must also pay to the high constable, within thirty days after demand, the county

rate assessed on their parish out of the money collected for the poor; or their goods are liable in default. They are also to make a return of the property rateable in the parish, to the justices at general and quarter sessions, under a penalty of £20 ; and in order to make this return, they are authorised to enter upon any lands to ascertain the value. The following is the common form of such return.

Return of the rental of the parish of in the county of , under 55 George III., c. 51, as charged to the poor-rate.

To his Majesty's worshipful justices of the peace for the county of , in quarter (*or* general) sessions of the peace assembled.

The return in writing upon oath of A. B. one of the churchwardens of the parish aforesaid, in the county aforesaid, of the total amount or real value of the estates within the said parish, as assessed to the poor-rate thereof at the time of making such return, and also of the proportionable mode of rating in pursuance of the aforesaid act of parliament, intituled "An Act to amend an Act of his late Majesty George the second, for the more easy assessing, collecting, and levying of County-rates." The total amount of the rental or value as charged and assessed to the poor-rate for the parish aforesaid, at the time of making this return, was . This district rates, as nearly as the parish officers can ascertain, at the rack rent, *or* full value, (*or as the case may be.*)

A. B. churchwarden.

Sworn in open court, the day of

PAWNBROKERS' ACT.

Churchwardens, &c. are to prosecute offences against this Act at the expense of the parish, 39 and 40 George III. c. 99.

PARISH BOUNDARIES.

Churchwardens, &c. are to make perambulations once a year, to preserve the metes and bounds of the parish.

LUNATICS.

Churchwardens to apprehend and secure them, on being required to do so by a magistrate's warrant, 9 George IV., c. 40

VESTRIES.

By the new vestry act of 1 and 2 William IV., c. 60, any number of rate-payers, amounting at least to one-fifth of the whole, or any number of rate-payers, amounting at least to fifty parishioners, may, on some day between the *first of December*, and the *first of March*, deliver a requisition signed by themselves, and describing their several places of residence, to one or more of the churchwardens, requiring them to ascertain whether a majority of the rate-payers of the parish desire the provisions of this act should be adopted. The requisition may be in the following terms:—

To the Churchwardens of the Parish of

"We, whose names are hereunto subscribed, being rate-payers resident in the said parish, and respectively rated or assessed to the relief of the poor thereof, do hereby require you, the said churchwardens, to ascertain and determine the adoption or non-adoption of an act of the 2 William IV., c. 60, intituled, An Act for the better regulation of vestries.

"Dated this day of in the year of our Lord, 18 .

On receiving this requisition, on the first Sunday in the month of March next afterwards, fix a notice in the following form upon the principal doors of the church, &c. specifying some day not earlier than ten, nor later than twenty-one days after such Sunday, and at what place in the parish the rate-payers are required to vote:

"The churchwardens of this parish of , having received a requisition, duly signed according to the provisions of an act of the second year of the reign of William the Fourth, chap. 60, for the better regulation of vestries, the rate-payers of this parish of are hereby required, all and each of them, on the day of next, and the two following days, to signify to the said churchwardens by a declaration, either printed or written, or partly printed, or partly written, addressed and delivered to one of the churchwardens at , their votes for or against the adoption of the aforesaid act, for the better regulation of vestries by the rate-payers of this parish.

(Signed) Churchwardens."

The voting must commence at eight in the forenoon, and close at four in the afternoon of each day, and the declaration delivered by the voters must be in the following terms:—

"I, A. B, of street, [*place or house*], in the parish of , vote for [*or* against, *as the case may be*] the adoption of the act of the second year of the reign of William the Fourth, chap. 60, for the better regulation of vestries by this parish."

(Signed)

After the voting is over, the churchwardens, after carefully comparing the votes, with the last rate for the relief of the poor, and examining, if necessary, any parish officer or rate-payers concerning the votes, they must declare whether or not *two-thirds* of the votes have been given in favour of the adoption, by a notice to the following effect in the *London Gazette*, and in one or more newspapers circulating in the district of the parish:—

"*Parish of*

"Notice is hereby given, that the above-named parish has adopted the act of the second year of the reign of William the Fourth, chap. 60, entitled An Act, &c., and that the numbers of the majority and minority of the votes given for and against the adoption of the said act are as follows:—that is to say, votes for the adoption thereof, and votes against the adoption thereof.

"Dated this day of in the year of our Lord, 18

(Signed) Churchwardens."

This notice must also be fixed on the principal door of every church and chapel in the parish.

The *whole* number voting, however, must be a clear majority of the rate-payers; and the lists may be inspected by any number of rate-payers not exceeding five together, at all reasonable times, within *one* month after such notice; the churchwardens to preserve the lists afterwards for future reference when required. But persons are not deemed rate-payers who have not been rated a *whole year*, and paid all rates except such as may have become due within six months preceding their voting.

If the rate-payers determine against the adoption. no requisition for the same purpose can be presented to the churchwardens within three years.

This act becomes operative on the publication of the notice for the election of vestrymen and auditors of accounts; and any officers who refuse to call meetings, &c., according to its provisions, or refuse to receive, or falsify the votes, &c., are guilty of misdemeanor.

On some *Sunday*, at least twenty-one days previous to the annual election, the following notice shall be fixed to the doors of the church, &c.:—

" *Parish of*

"The parishoners duly qualified according to the provisions of the act of the second reign of King William the Fourth, entitled, An Act, &c., are hereby required to meet at on the day of conformably to the provisions of the said act, and then and there to consider of, and elect, fit and proper persons to be vestrymen for the ensuing year;—that is to say, members of the vestry, and auditors of accounts.

(Dated) (Signed) Churchwardens."

The churchwardens may summon the rate-collectors to assist them in taking the votes; and the parishoners may proceed to nominate *four* inspectors of votes, the churchwardens nominating four others, and then proceed to the election of vestrymen and auditors, by a majority of votes then present; but any five rate-payers may demand a poll to be taken by ballot; the voter delivering one folded paper, containing the names for which he votes as vestrymen, and the other the names for which he votes as auditors; each rate-payer to have only one vote for each list. The inspectors are to deposit the folded lists in separate boxes; after the close of the ballot, the inspectors are to examine the votes, adjourning the examination, if necessary, until they have decided who have been elected. If an equality of votes be given for two or more persons, the inspectors are to decide the election; and any person forging or falsifying any list, &c., or obstructing the election, may be convicted before two or more justices in the penalty of not less than £10, nor more than £50; and in default of payment, to imprisonment for not more than six nor less than three months; the *fine* to be divided between the informer and the poor of the parish.

The inspectors shall deliver to the churchwardens lists of the persons so chosen, which list, or a copy, shall be fixed to the doors of the churches, &c. or other places of public notice in the parish; and an inspector wilfully making an incorrect return, may be convicted before two justices, in a penalty of not less than £20, nor exceeding £50.

The election of such vestrymen and auditors shall take place in the month of *May;* and where a ballot is demanded, it shall commence on the following, and continue for three successive days, from eight in the morning to four in the afternoon, to be appointed in the first instance by the churchwardens, but afterwards by the vestry; and in populous parishes, the ballot may be taken in more than one district.

The vestry shall consist of *twelve*, where the rated householders do not exceed 1000:—of *twenty-four*, where they exceed 1000;—of *thirty-six*, where they exceed 2000; and *twelve* additional vestrymen, for every additional 100 of rated householders, but the vestry in no case to exceed *one hundred and twenty*. Vestries under local acts to remain the same in number; and the rector, district rector, vicar, perpetual curate, and churchwardens of the parish shall form part of, and vote in such vestry; but not more than one rector, &c. from one parish, &c shall have, *ex officio*, a vote at any meeting.

At the first election after adopting this act, one-third of the vestry to be determined by lot shall retire from office, and an equal number be elected to supply their places; and on the second annual election, one half of the remaining two-thirds shall retire, and their number be supplied as before; and on the third annual election, the remainder of the first vestry shall retire, and their places be supplied in like manner. And at every subsequent election, those who have served three years shall retire, and have their places filled up, and all such vacancies as have been occasioned by death or other causes, shall be annually supplied; but parties so going out by rotation, may be immediately eligible for re-election.

Out of the metropolitan police district, the qualification for vestrymen is being rated to the relief of the poor on a rental of not less than £10, and the occupier of a house, lands, &c. so rated; but within the city of London, or the metropolitan police district, or if the householders exceed 3000, the qualification must be on a rental of not less than £40 per annum.

After the adoption of the act, the vestry shall exercise all the powers previously possessed by former vestries; and all officers are accountable to them, as the sole representatives of the parish. Their powers and duties may be performed by the majority present at any meeting, there not being less than five present in a vestry of twelve, and not exceeding twenty three;—nor less than seven, where the vestry consists of twenty-four, and not exceeding thirty-five; nor less than nine, where the vestry consists of thirty-six or upwards. And where the vestry room is too small, the vestry may meet elsewhere in the parish, but *not* in the church or chapel.

The vestry may appoint a chairman, in the absence of any person authorised by law or custom to take it generally. The vestry shall keep books of their proceedings, with the names of those who attend, which books shall be open at reasonable times to the inspection of the vestrymen, rate-payers, or creditors on the rates, without fee or reward; and *extracts* may be taken from them without payment;—and the clerk or other person refusing to permit it, shall forfeit any sum not exceeding £10. The vestry must also keep books of accounts, which are to be open for inspection, or extracts, under the same penalty of £10.

Five rate payers, who have signified in writing their assent to serve, are to be elected as auditors on the same day and in the same manner as the vestrymen, and with the same qualifications; but none of the vestrymen are eligible as auditors; and if any person be chosen to fill both situations, the vestry shall declare such person to be incapable of acting as a vestryman; and no person can fill the situation of auditor who is interested, directly or indirectly, in any contract, &c. or in providing any articles for the parish; any such person being elected, to cease to be an auditor.

The auditors shall meet twice at least in each year, to audit the accounts, which the vestry are required to lay before them in the presence of the vestry clerk; and may summon any person to attend them with such books, documents, &c. as they may require; and any persons refusing to attend, or obstructing such inquiry, shall be guilty of misdemeanor. The accounts, when audited and approved, shall be signed by the auditors in the presence of the vestry clerk, who shall also affix his signature; and remain accessible to the examination of any rate-payer, creditor of the parish; but nothing in this act is to

deprive the parishioners of any remedy before possessed by them by the law of the land.

An abstract of the accounts shall be made out by the vestry twice a-year, within fourteen days after such audit, either in writing or print, and a copy delivered to all rate-payers applying for the same, on the payment of one shilling, which copies he is so to publish and distribute accordingly.

And the vestry shall make out, once a-year at least, a list of all the estates and charitable bequests belonging to the parish, their situation, or mode of investure, with the yearly rental, and the appropriation of the amount, with the names of the persons partaking of the benefit (except where allotted generally to the poor), and to what amount in each case; and also the names and description of persons in whom such estates are vested, and of the trustees for each charity: the aforesaid list to be also open to the rate-payers, at the office of the vestry clerk. But nothing in this act is to invalidate any ecclesiastical law or constitution of the Church of England, except so far as concerns the appointment of vestries, or to destroy any of the rights and powers belonging to the clergy of the Established Church, as individuals or corporate bodies, or to abridge or control their ordinary jurisdiction over or relating to any matter or thing respecting the ministers thereof. And nothing in this act shall extend to any parish, not being within or part of any city or town, which shall *not* contain *more* than 800 persons rated as householders, and having paid the rates for the relief of the poor within the year preceding that in which the provisions of this act may be desired to be put in execution within such parish.

The churchwardens, as guardians of the church, have the general control and management of its utensils, monies, &c., and all writings relating thereto, for, and on which they are liable to be sued, and may sue as a corporation; but this is confined to property of a personal nature. They have no interest in the freehold of the church, or in any land belonging to it; nor can they buy or sell, nor take, nor grant leases, nor maintain actions for trespass.* Neither can they dispose of any church property with-

* Except where in the City of London the incumbent and churchwardens form an individual corporation, then the churchwarden, with the incumbent, may take, hold, and demise lands, &c.

out the consent of the parishioners, and license of the ordinary.

The churchwardens, jointly, may sue either at common law or in the ecclesiastical court, any persons doing damage to the church property. This is generally done at common law, by which damages may be obtained proportionate to the injury, while the ecclesiastical law can only compel restitution of the property. They must of course *commence* proceedings while they continue in office, and not after they have ceased to be churchwardens; but succeeding churchwardens may bring actions on causes occurring in the time of their predecessors; and a release from one churchwarden will not prevent another from bringing an action against the party released.

Churchwardens are not bound to advance any money out of their own pockets, except for the immediate relief of the poor. They ought therefore to have money in hand, by a rate properly levied, for they cannot legally make a rate to reimburse themselves, nor have they any legal mode of compelling reimbursements by the parish, without some express and previous agreement; but they may probably be justified in making a following rate which will include the sums (reasonably) expended.

Churchwardens, however, may make agreements for the benefit of the parish, which will bind their successors and the parish. They may also purchase goods, and take bequests, for the same purpose.

SEATS IN CHURCHES.

The churchwardens may alter pew-rents, with the consent of the ecclesiastical authorities, (or of the bishop and vestry where the rents are assigned to the parish); where such rents are unpaid for three months, after being due, and demanded in writing, they may relet them to other persons, rendering the overplus to the previous occupiers; and the rent in arrear may be recovered as the church-rate. Seats in the new additional churches and chapels are only to be let or sold to parishioners while they continue resident; and the sale or letting must be by private contract, and is subject to the reserved rents fixed by the acts. One year's rent is to be paid on admission, and afterwards half-a-year's rent continually in advance;—and non-payment for two half-years is a vacancy of the seat. Six weeks' notice of vacant pews is to be given at the close of each year, by writing affixed to the doors of the church, &c., and if not taken at

the rent fixed within fourteen days after the commencement of the ensuing year, they may be let at the rents fixed to persons of an adjoining parish, &c., not having sufficient accommodation; but such pews must *every year* be first offered to the parishioners, before they are let to others. The life-trustees, or churchwardens, may also dispose of vaults, burying-places, &c., paying the ordinary dues to the incumbent, investing the money in public securities, to make good any deficiencies in the stipends of the minister and clerk, and of incidental expenses, chargeable on the rents of seats, &c., and afterwards to the repairs of the church, &c. But where there is any *surplus*, the pew rents are to be reduced in proportion, or a larger number of free-seats provided, as the bishop may direct.

The churchwardens may raise rates for the building of new churches, &c.; and, with the consent of vestry, may raise money on the credit of such rates, with sufficient to pay the interest and one-twentieth part of the principal, yearly, until the whole is paid off; besides having the general power of doing all that may be requisite as to repairs, good order, &c., as if the churches were in separate parishes. The statutes applying are, 58 George III. c. 45; 59 George III. c. 134; 3 George IV. c. 72; 5 George IV. c. 103; 1 and 2 William IV. c. 38.

ACCOUNTS.

Within one month, at farthest, after the expiration of their year of office, the churchwardens must appear before the minister and parishioners in vestry, and render their accounts, having previously given notice on the Sunday before of a parish meeting for that purpose. The receipts and disbursements must be produced, examined, and allowed by the majority present, and they are then to be entered in the church books of account, and signed by some of those present in proof of the allowance. And the balance, with the books, &c., must be delivered over to the succeeding churchwardens, with the goods and chattels of the church, which were committed to their care.

The churchwardens must swear to the truth of their accounts before a magistrate, who will attest the deposition; and the oath is usually taken as a voucher for the accuracy of sums under 40*s*. Above that amount, vouchers must be produced, and be proved by the witnesses who signed them, if it is required. But the churchwardens are, of course, liable to be questioned as to the

discretion and propriety of accounts, which they may have actually paid, but which may be disallowed if paid improperly to the prejudice of the parish; and their accounts must remain open to inspection. If churchwardens neglect or refuse to account, they may be presented to the next visitation, by their successors; or any parishioner may call them before the ordinary; or the new churchwardens may proceed at common law.

COLLECTIONS.

Churchwardens and overseers are to receive such occasional collections as may be made for the use of the poor, and appropriate them according to the intention of the donors.

OVERSEERS

Are appointed by 43 Elizabeth c. 2, s. 1, which directs that the churchwardens of the parish, and four, three, or two substantial householders, as overseers, are to be nominated under the hands and seals of two or more justices every year,* under the penalty of 5*s*. for neglect; and if the justices neglect or refuse to make such appointment, the Court of King's Bench will compel them to do so. As the election of the overseers belongs to the justices, they annually issue precepts to the high constables of their districts, requesting them to issue warrants to the petty constables to give notice to the then overseers within their liberties to return the justices written lists of a competent number of substantial householders, so that the justices, at the special sessions, may appoint them for the year ensuing. It is, however, customary for the parishioners, in vestry, to return a list of persons *recommended* to serve the office; and the names of the parties wished for by the parish are placed at the head of such list; and such persons are generally selected by the justices, unless some cause is shewn against them, or, what sometimes happens, there should be any personal or party feeling against them. The following is the ordinary form of a vestry return:

* Mayors, bailiffs, &c. of corporate towns, have the same authority in the limits of their jurisdiction; and in London the appointment may be made by any alderman in his own ward.

"At a public vestry held, pursuant to notice, on the day of , 18 , the following persons were returned to His Majesty's justices of the peace acting in and for the county [hundred, *or* subdivision, of , in the county of], as substantial householders, and fit and proper persons to serve the office of overseers of the poor for the parish [township, hamlet, &c.] of for the year ensuing.

A.B. } C.D. } Churchwardens. E.F. } G.H. } Overseers I.K. } L.M. } Inhabitants.

(Signed) N. O. Vestry Clerk."

(*Insert List of Names.*)

The appointment should be signed, sealed, and delivered, on the 25th of March, or within *fourteen days* afterwards, and served personally on the parties appointed, or they will not be liable to the penalties for refusing to serve. The appointment is in the following terms:

"To wit. } To and , two substantial* housekeepers of and in the parish of in the said county.

"We, two of his Majesty's justices of the peace in and for the said county, one of whom is of the quorum, do hereby nominate and appoint you, the said and , to be overseers of the said parish of , according to the directions of the statutes in that case made and provided. And we do hereby require that you forthwith take upon you the execution of the said office accordingly. Given under our hands and seals, this day of , one thousand eight hundred and

A. B.—O
C. D.—O."

Persons improperly appointed, by giving notice to the officers for the time being, may appeal to the next quarter sessions to establish their claim of exemption, which must be founded on one, or more, of the grounds on which churchwardens are exempt, for which see p. 969.

Any parishioner can appeal against the appointment of an overseer, as well as the party appointed.

Overseers duly appointed, and having due notice of their

* The expression, *substantial* householders, is of necessity a *relative* term, with reference to the wealth and numbers of the parish; and a labourer may be appointed, if there be no fitter person. A female may also be appointed, where the male householders are not sufficiently qualified.

appointment, may be indicted for misdemeanor at the sessions, if they refuse or neglect to take upon themselves the execution of the office; but they are not liable to prosecution where they have commenced proceeding to make void the appointment, until the order has been confirmed by the sessions.

On the death, insolvency, or removal of an overseer, two magistrates, upon oath of the circumstance, may appoint another person in his stead until a new appointment is made.

Overseers remain in office until the time limited for the appointment of their successors; but they cannot remain in office more than a year, although no successors should be appointed.

On the *death* of an overseer, his executors &c. are to, deliver over all things concerning his office to one of the churchwardens, or the other overseer, within *forty days* after his decease; and to pay out of his assets all sums of money due on account of his office before the payment of any other debts. And where an overseer removes, he must deliver to the churchwardens, or overseer, his account, verified on oath, and all rates, assessments, books, papers, sums of money, and other things concerning his office, before such removal, on pain of being committed to prison.

The first duty of the new overseers is to call upon their predecessors for the adjustment of their accounts, and the payment over of any balance in hand; under 17 George II. c. 28, which requires churchwardens and overseers, within fourteen days after the appointment of their successors, to deliver to them a just account of all sums received, or rated and not received, and of all goods, chattels, and materials, belonging to the parish, and of all monies paid on account of their said office. This account must be presented to two or more justices for their allowance, after being examined and approved by the vestry. On neglect or refusal of the old overseers to furnish such account, they may be summoned before two magistrates, who may give them reasonable time to account, or commit them to prison for not doing so; in which latter case they may be indicted for the refusal as a misdemeanor.

Overseers are also required, by and with the consent of two or more justices, to set to work the children of such parents who are not able to maintain them, and married or unmarried persons who have no means of maintenance,

and use no ordinary trade; and to raise weekly, or otherwise, by general taxation of the ratepayers, such sums as may procure a convenient stock of hemp, flax, wool, thread, iron, and other necessary ware or stuff, to set the poor on work; and, also, such other sums of money as are necessary for the relief of the lame, impotent, old, and blind, and others who are poor, and not able to work; and also for putting poor children out as apprentices.

For these purposes the statute, 43 Elizabeth, requires them to meet the churchwardens at least every month, in the parish church, on the *Sunday*, in the afternoon, under a penalty of 40*s*. without reasonable cause of absence; but the parish officers of the present day have repealed this part of the statute, and meet for such business when and where they please.

Overseers, with the churchwardens, are to receive persons removed from one county, &c. to another, under the warrant of two justices, under a penalty of £5, but may appeal to the quarter sessions of the place of removal. 3 William and Mary, c. 11.

Overseers must take insane persons before a magistrate, whether chargeable or not, within seven days after their knowledge of the fact, under a fine not exceeding £10, nor less than 40*s*.

Overseers and churchwardens must not supply, for profit, any article to the parish, &c., under the penalty of £100, except under a certificate from two neighbouring justices, after proof of the fact upon oath, that there is no other competent person within a convenient distance. But overseers, &c., may in any case supply articles to the poor, provided they derive *no profit* from so doing.

Overseers are to provide proper medical assistance to casual poor in the case of accident, such as the breaking of a limb, &c., and to pay reasonable compensation to any person who affords necessary assistance.

Overseers on being served with a written notice of any person keeping a bawdyhouse, gaminghouse, or other disorderly house, are to attend before a magistrate. They are not, however, bound themselves to enter into recognizances to prosecute such offenders, except they please; but if the duty devolves upon the constable, the overseers, upon the conviction, must pay the expenses of the prosecution, as well as the rewards of given to each of the two inhabitants who gave the notice, on forfeiture of double the sum refused or neglected to be paid.

POLICE RATE.

The overseers, upon the receipt of a magistrate's warrant, are, within forty days, to pay the police rate raised under 10 George IV., c. 44, out of the money collected for the poor; and they may levy such rate as part of a poor rate. They must deliver to the receiver a note of the sum paid, and take his receipt, which must be allowed in their accounts. On their neglect or refusal, the amount may be levied upon their goods, &c.; and the secretary of state may appoint persons to act as overseers for the levying of such rate. All collectors of poor rates are deemed overseers for the purposes of this act: and where there is no poor rate in the metropolitan districts, two justices may appoint an assessor to rate the inhabitants any sum not exceeding *eightpence* in the pound, on all property usually rateable to the poor, according to the last valuation, from the county-rate.

JURY LISTS.

Overseers and churchwardens, by 6 George IV., c. 50, are to assist in making out the jury lists, according to a form to be delivered to them by the high constable; and if they neglect or refuse to do so, or wilfully omit the name of any one qualified to serve, or take any reward for omitting any such person; or wilfully insert wrong descriptions or qualifications, or refuse or neglect to apply for the requisite forms, or refuse or neglect to fix a copy of such list on the doors of the church or chapel on any of the Sundays required by the statute, or refuse to permit any inhabitant to inspect such list; or, after notice, refuse or neglect to produce it at any petty sessions, or refuse to answer questions on oath, or refuse to allow the justices at petty sessions, or any justice of the peace, to inspect or make extracts from the poor rates (such rate being in the custody of the party so refusing,) such offender shall, for every such offence, forfeit any sum not exceeding £10, nor less than 40*s*. And to enable churchwardens and overseers to complete such lists, this statute authorizes them to inspect the tax assessments, as well as those of the poor rates.

Overseers have no authority to borrow money on behalf of the parish; nor have they any legal right to commence suits at law without the approbation of the vestry; and if they do so, they may be personally liable for the expenses.

THE POOR.

NEW POOR-LAW BILL.

THE introduction of the new statute for the relief and management of the poor, as it materially changes the situation and duties of the parochial officers, will be most appropriately introduced in this place; and it need only be prefaced by the remark, that the variety, extent, and importance of its provisions, render it highly necessary for every parish authority to make himself fully and particularly acquainted with all the details. It is a bold experiment, for and against which there requires little ingenuity to be prolix in commentary; but, as the experiment is on its trial, it should, at least, have fair play; and this can only be obtained by the parties who are called upon to carry it into effect taking due care at least to acquaint themselves with the duties they are required to perform.

THIS statute of the 5th of William the Fourth, c. 76, entitled, "*An Act for the Amendment and better Administration of the Laws relating to the Poor in England and Wales,*" was passed August 14, 1834; and authorises his Majesty, his heirs, &c., to appoint three commissioners to carry its provisions into effect. These commissioners are removable at pleasure; and, in case of vacancy, the remaining commissioners may act until the vacancy is filled up (s. 1). They are called "*The Poor Law Commissioners for England and Wales.*" The whole, or any *two*, have power to sit as a board, with power to summon and examine witnesses, and to demand the production of papers, on oath, or by subscribing a declaration, as they think fit; but they cannot compel any witness, by their summons, to travel more than *ten* miles from his place of abode: and they are not authorised to act as a court of record, nor to require the production of any *title* deeds. &c., relating to any property, except it belong to some parish or union (s. 2). The commissioners are to have a *common seal;* and any of their rules, orders, &c., or copies of them, purporting to be sealed with such seal, are to be received as evidence without further proof; but are not so receivable unless they are sealed (s. 3.) The commissioners are to *record*

their proceedings (s. 4,) to make a general *report* to the secretary of state *yearly* (s. 5,) and also to report their proceedings to the secretary of state whenever they are required so to do (s. 6). The commissioners may also *appoint*, and *remove* at their pleasure, *nine* assistant commissioners; but not exceeding that number without the consent of the *treasury* (s. 7). No commissioner can sit in parliament (s. 8). They have authority to name the secretary, and all other clerks and officers (s. 9). The commissioners themselves to be appointed for a period of *five years*, from the date of the act, and thenceforth until the end of the then next session of parliament (s. 10); and both the commissioners and the assistant commissioners are required to take the following oath before one of the judges:—

"I, A. B. do swear that I will faithfully, impartially, and honestly, according to the best of my skill and judgment, execute and fulfil all the powers and duties of a commissioner [*or* assistant commissioner, *as the case may be*] under an act passed in the fifth year of king William the Fourth, intituled," &c. [*here set forth the title of the act.*]

And a notification of the appointment of the commissioners and their assistants is to be sent to the respective clerks of the peace, entered on the records of the county, and published in one or more newspapers published or circulated in the county (s. 11). The commissioners may delegate and revoke powers, &c., to assistant commissioners; the assistant commissioners may summon witnesses, and examine them on oath or declaration (s. 12). Persons giving false evidence are liable to the penalties of perjury; and persons who refuse to attend when summoned, or refuse to give evidence, or wilfully alter, suppress, conceal, destroy, or refuse to produce any books, contracts, agreements, accounts, and writings, or copies of the same, which may be required, may be prosecuted as guilty of misdemeanor (s. 13). Witnesses, writings, &c., not brought more than ten miles from the parish or union interested in the attendance or production, the expense is to be paid,—reasonable expenses,—out of the poor rates of such parish or union so interested; and in other cases the expenses ordered or allowed by the commissioners are to be deemed part of the incidental expenses of the execution of the act and defrayed accordingly (s. 14).

From the passing of this act, the administration of relief to the poor is placed under the control of the commissioners, who are from time to time, as they see fit, to make

and issue such rules, orders, and regulations, for the management of the poor—the government of workhouses, and the education of children placed there—the management of parish poor children, under 7 George III. c. 39, in the bills of mortality, and the superintendence of the houses where they are kept—the apprenticing the children of poor persons—and "*the guidance and control of all guardians, vestries, and parish officers, so far as relates to the management or relief of the poor, and the keeping, examining, auditing, and allowing of accounts, and making and entering into contracts in all matters relating to such management or relief, or to any expenditure for the relief of the poor, and for carrying this act into effect in all other respects as they shall think proper.*" They may also *suspend* or alter rules, &c., but are not authorised to interfere in any individual case for the ordering of relief (s. 15). The general rules, &c., made by the commissioners, must be submitted to the secretary of state for forty days before coming into operation; and are not to come into operation if disallowed by the king in council within that period:—and if such rules, &c., be disallowed *after* that period, they must cease to operate from the time of such disallowance;—but without prejudice to any act done while they were in operation (s. 16). Such general rules, &c., of the commissioners are also to be laid before both houses of parliament within one week after the commencement of each session, by the secretary of state, if they have not previously been so submitted (s. 17).

The rules, orders, &c. before they come into operation must be forwarded by the commissioners to the overseers of any parish, the guardians of any union, or their clerk, and the clerk to the justices of petty sessions of the division; and such overseers, guardians, clerks, &c., are to preserve, and give publicity to, such rules, &c. in such manner as the commissioners may direct; and *to allow every owner of property, or his agent, or any rate-payer, in such parish*, &c. to *inspect* such rules, &c. at all reasonable times, *without charge;* and to furnish copies at *threepence* for every folio of *seventy-two words;* under a penalty in each case of such *neglect* or *refusal* of any sum not exceeding *ten pounds*, nor less than *forty shillings*, to be recovered as *hereafter directed*. And the *disallowance* of any rule after it shall have come into operation, is to be notified in the manner aforesaid by the commissioners, and made public, preserved, and suffered to be inspected, &c., by the parish authorities, under the like penalties (s. 18.)

The orders, &c. of the assistant commissioners are not to be in force until they have been adopted by the commissioners, and sealed with their seal, when such orders shall be considered as made by the commissioners; and no rule, &c. of the commissioners shall be in force until fourteen days after a written or printed copy shall have been sent by the commissioners, sealed, &c., as before mentioned, to the overseers, &c. except orders made in answer to statements, &c. hereafter directed to be made by overseers, &c. to the commissioners (s. 20).

The powers of 22 George III. c. 83, of 59 George III. c. 12, and of all other acts relating to building, or altering workhouses, or the acquiring or disposing of land, &c. or of borrowing money for such purposes, are to be exercised under the control of the commissioners, and subject to their orders. The commissioners, &c. are also entitled to *attend* all *local boards* and *vestries;* but not to order the *building* or *hiring* of workhouses, except in cases where such powers are expressly given by this Act (s. 21). And no additions are to be made to the rules contained in the schedule to 22 George III. c. 83, or in any other act, as to the power of justices to make regulations for poorhouses, &c. until such alterations or additions have been confirmed by the commissioners; which shall then become binding upon all persons, and no magistrate shall have power to repeal them (s. 22).

But the commissioners, with the *consent* of a *majority* of any *union*, or with the *consent* of a *majority* of the ratepayers and owners of property entitled to vote as hereafter described in any parish, such majority having been ascertained as described in this Act, are empowered at their discretion to order workhouses to be built in parishes having none; to purchase or hire land for such purpose, and to hire or purchase other buildings to be converted into workhouses. And also, with the same consent, to order the overseers, &c. to enlarge or adapt existing buildings for the purposes of this Act; the expense of such orders to be borrowed or levied by assessments, in the method money is now raised for such purposes in such places (s. 23). The future poor rates of the parish to be charged with the repayment of any sums *borrowed;* but no greater amount to be raised for such repayment within any one year than the annual average amount of poor rates for the three previous years ending at *Easter* next preceding the raising of such money, and sums so borrowed must be repaid by annual instalments of *not less* than one

tenth of the sum borrowed, with interest of the same (s. 24).

And the commissioners, *without such consent* as last mentioned, may order workhouses, &c. to be altered and enlarged, or other suitable buildings to be converted into workhouses, and direct overseers, &c. to raise the necessary sums of money, as before stated, provided the principal sum to be so raised *shall not exceed the sum of fifty pounds*, nor in any case one tenth of the average annual amount of the rates raised for the relief of the poor of the parish, &c., for the three years ending at the *Easter* next preceding the raising of such money (s. 25).

The commissioners may unite parishes, &c. and direct the workhouses, &c. of such parishes to be used in common; but each parish is to remain chargeable for its own poor (s. 26).

Justices may order out-door relief to aged and infirm persons who are unable to work; but he must certify the fact to be of his own knowledge, and such person must be entitled to relief from the parish, &c. and must also desire to receive such relief out of the workhouse (s. 27).

When parishes are proposed to be united, the commissioners must take the average of the expenses of each parish for three years, ending on the 25th of March next preceding such inquiry, so that each parish may be assessed in a common fund for the necessary buildings, alterations, &c. in the like proportions as on the said average of three years the relief of the poor had cost each parish; and further averages of three years may be taken in future in the same manner, if the commissioners think fit, for the same purposes (s. 28). And the like provisions for *taking averages* are extended to unions effected under local Acts of incorporation. And under 22 George III. intituled, "*An Act for the better relief and employment of the poor*" (s. 29.) And the *parliamentary* returns of the expense of relief to the poor for the last three years are to be taken for evidence on the question of averages, except where they are proved to be incorrect* (s. 30.)

The commissioners have power to dissolve, to add to, or take away from *any* union, (except when united for the purpose of settlement or rating) and to make such rules

* So much of 22 George III. c. 83. s. 5. and so much of 56 George III. c. 129, s. 1. restraining parishes from contributing to workhouses at a greater distance than ten miles;—and so much of 22 George III. s. 29. limiting classes of persons to be sent to workhouses, are respectively repealed by this act, s. 31.

as may be adapted to its altered state; but the rights of the respective parishes, and the claims on each, are to be ascertained and secured; and the dissolution or alteration is not to affect the rights of third parties; nor to take place without the consent of a majority of not less than two-thirds of the guardians of the union (s. 32).

United parishes may be *one* for the purposes of settlement, and an agreement to that effect shall be binding on each parish, and not be revoked, or annulled, but the expense of maintaining, &c., every poor person thereto belonging shall be considered between such parishes a settlement in union, and all expenses of litigating, &c., shall be defrayed out of a common fund, but the contribution of each parish to such common fund, is to be fixed upon the system of average fixed on the union of parishes under this Act, *and shall not* be subject to farther variation (s. 33). And a union may also be one parish for the purpose of rating with the consent of all the guardians, and the approbation of the commissioners, on depositing the agreement, or a counterpart of it, with the clerk of the peace for the district, &c. (s. 34). But in this case the guardians are to assess the value of the property in the respective parishes; and the rates grounded on such assessment are to be the basis of the assessment of the poor rates, the existing right of appeal to remain, and be exercised in the same manner as before (s. 35). In such cases the expenditure on account of the poor is to be in common; the expense of valuation is also to be charged as a common rate; but if any parish of the proposed union for the purpose of rating is not represented by a guardian *solely* elected for such parish, the parish is *not* bound by any such agreement, unless a majority of the owners of property and rate-payers testify their assent in writing in such form as the commissioners may prescribe (s. 36). But no union can be so formed *without* the consent of the commissioners (s. 37).

When such unions are formed, a board of guardians is to be elected by the rate-payers and owners of property in the union. The commissioners determine the *number*, prescribe the duties, and fix the qualification, but not to require a qualification exceeding an annual rental of *forty pounds*. But one or more guardians must be elected for *each* parish in the union. The guardians are to continue in office until the 25th of March* following their

* If the 25th March fall on *Sunday* or *Good Friday*, then to the day following.

appointment; or within fourteen days after the 25th of March, in every year, the guardians shall go out of office, and the guardians for the ensuing year shall be chosen. In the event of vacancy, by death, removal, refusal, or disqualification, between the periods of election, or in case the full number shall not be duly elected, the remaining members of the board are to act as if no vacancy had occurred, until it is duly supplied; and every justice residing in the parish, and acting for the county, &c. in which it is situated, shall be a guardian, *ex officio*, until the board is duly completed, and in case of any irregularity or delay in any subsequent election of guardians, such justice shall receive and carry into effect the rules, &c. of the commissioners; and even when the board is complete, every such justice is entitled to act as a member of such board, if he think fit to do so; but no guardian (whether elected, or *ex officio*) to have any power except at a local board, unless where otherwise directed by the commissioners. No act of the guardians is to be valid unless *three* are present; and the guardians are eligible for re-election, although they may have been previously chosen guardians for any other parish (s. 38). And the commissioners may further direct that the administration of the laws for the relief of any *single parish* may be conducted by a board of guardians constituted as set forth in the last section (s. 39).

In the *election* of guardians, (and in any election under this Act) the owners of property, as well as the rate-payers, are entitled to vote upon the proportion established by 58 George III. c. 69. The rate-payers under £200 shall have a *single vote;* if rated at £200 or more, but under £400, to have *two votes;* and if rated at £400 or more, to have *three votes;* and the majority of votes so collected is to be binding on the parish. The votes of the owners of property who do not occupy it, are to be regulated by the amount at which the occupiers may be assessed; and where the *owner* of property is also the *occupier*, he may vote in *both* capacities; and the owner of property may authorise any one by appointment in writing to vote for him as his proxy.* But no owner can vote either in person or by proxy, unless he or his proxy has, previous to the day of voting, sent his name and address, with a description of the property for which he claims to vote, to the overseers of the parish, and the

*This can only refer to his right of voting as *owner*, though the act is not very explicit on this point.

proxy must likewise send the original or an attested copy of his appointment; and these names and statements, &c. are to be entered in the rate-book, or some other book, with the assessment of the rate in respect of which the parties claim to vote. Persons not voting, or not complying with the directions, are to be considered as having no vote on the particular question; and no rate-payer is entitled to vote or act under this statute unless he has been rated and *paid* the parochial assessments for the *whole year* preceding, except such as have become due within *six months* preceding his claim to vote, or act, &c. Where property belongs to corporate bodies, joint stock companies, &c. no one but the officer whose name is entered in the parish books, is entitled to vote (s. 40). And all elections of guardians, visitors, and other officers heretofore made under 22 George III. c. 83, or under any *local act*, are hereafter to be made under the provisions of this statute (s. 41).

The commissioners may make rules, &c. for present or future workhouses, and vary bye-laws already in force, or to be made hereafter, with reference to the relief or employment of the poor; but if any such rule &c. is directed to, or affects more than one union, it is to be considered a *general rule*, and subject to the provisions respecting general rules (s. 42).

Justices are empowered to see the bye-laws enforced, and to visit workhouses, pursuant to the Act of 30 George III. c. 49, and on summons before *two* justices, to impose the penalties hereafter mentioned for neglect, &c. And where the rules, &c. of the commissioners are not in force, justices, surgeons, &c. may continue to visit and act as heretofore (s. 43).

Buildings taken for workhouses are to be considered within the jurisdiction of the places to which they belong, although situated without the limits or chartered boundaries thereof (s. 44).

No lunatic, or dangerous idiot, to be detained in any workhouse more than fourteen days (s. 45).

The commissioners may direct overseers and guardians to appoint *paid officers* for parishes or unions, fix their duties, and the mode of their appointment and dismissal, the nature of the security to be required, and the amount of their salaries (s. 46).

All overseers, &c, are to pass all accounts *quarterly*, in *addition* to the *annual* account now required; and where the rules, &c. of the commissioners are in force, as often as those rules require, but *not less* than once a quarter, to the auditors, &c. who may be appointed; and, if required, they must verify the accounts, &c. on oath, or subscribe a declaration to the

truth thereof, under the penalties prescribed for giving false evidence, or refusing to give evidence, as in s. 13. All balances, &c. are recoverable as penalties, &c. under this act; and no proceedings for such penalties will discharge the liability of the surety of any treasurer, &c. (s. 47).

Masters of workhouses and parish offices are placed under the orders of the commissioners, who may remove, for incompetence, neglect, &c. and may require the parties competent to appoint others in their stead; the persons so removed not being eligible to any other paid office connected with the relief of the poor in the parish, &c. without the consent of the commissioners; and no person is eligible to any parish office who has been convicted of felony, fraud, or perjury (s. 48).

No contracts are valid unless conformable to the rules of the commissioners, unless adopted by them (s. 49). The Act 45 Geo. III. c. 24, as to *contracts*, is *repealed* (s. 50). But the *penalty* imposed by 55 Geo. III. c. 137, on persons having the management of the poor being concerned in any contract, is extended to all persons appointed under this act (*s. 51*).

The commissioners shall regulate the amount, nature, and manner of relief to able-bodied paupers and their families *out* of the workhouse; and any relief contrary to their regulations is to be *disallowed*. But the overseers, &c. may delay the operation of such regulations, under *special* circumstances, for any period *not exceeding thirty days*, and make a report of the delay to the commissioners; and if they disapprove of the delay, they may fix a day from which all such relief sha'l be disallowed by a *peremptory* order upon the overseers. A quaterly account of such cases is to be sent to the secretary of state. But in cases of particular emergency, where the overseers depart from this rule, they must report such departure, and the ground of it, within *fifteen days*, to the commissioners, and if they approve of the deviation, or if the relief have been afforded in food, temporary lodging, or medicine, the relief, if otherwise lawful, shall be allowed (s. 52)

The 36 Geo. III. c, 23, the 3rd and 4th sections of 55 Geo. III. c. 137, and the 2nd and 5th sections of 19 Geo. III. c. 12. are repealed (s. 53); and no relief is in future to be given except by the board of guardians, or select vestry, according to the provisions of 1 & 2 Wm. IV. c. 80, or other acts under which the select vestries may have been appointed; and no overseer shall give other or further relief or allowance from the poor rate than such as shall be ordered by the guardians or select vestry, except in cases of sudden and urgent necessity, when he is required to give such temporary relief as each case shall require, in articles of absolute necessity (but *not in*

money), whether the applicant be settled in the parish or not. And if any overseer shall, in such case, refuse or neglect to give such necessary relief to poor persons *not settled* nor usually residing in the parish to which such overseer belongs, any justice may order, by writing under his hand and seal, to give such temporary relief as the case may require, but *not in money;* and on disobedience of such order, any two justices may convict such overseer in any penalty *not exceeding* £5: and any justice is empowered to give an order for *medical relief* only, to any parishioner as well as non-parishioner, where required by sudden and dangerous illness, under the like penalty on the overseers for disobedience; but no justice can order relief to any one from the poor rates, except as hereinbefore provided (s. 54).

Masters of workhouses are to keep registers, and the master, or other paid officer, shall, on such day, and in such form as the commissioners may direct, enter an account of the name of every poor person who shall on such days be in receipt of relief in each workhouse, with particulars of their families, settlement, relief, employment, &c. And the overseers, when required, are to furnish a similar register of persons receiving relief *out* of the workhouse; after which, a similar general account is to be taken and registered of all persons receiving relief in and out of the workhouse, when, and as often as such relief shall be granted (s. 55).

Relief given to a wife, or for children under the age of sixteen, not being blind, deaf, or dumb, is considered as given to the husband or father; and if to the children of a widow, as given to such widow; but this act shall not discharge the parents and grandparents of any poor child from their liability to relieve them under the 43 Elizabeth c. 2 (s. 56).

"Every man who, from the passing of this act, shall marry a woman having a child or children at the time of such marriage, whether legitimate or illegitimate, shall be liable to maintain such child or children as a part of his family, and shall be chargeable with all relief, or the cost price thereof, granted to, or on account of, such child or children, until they shall respectively attain the age of sixteen, or until the death of the mother" (s. 57).

And "any relief, or the cost price thereof, which shall be given to, or on account of, any poor person above the age of twenty-one, or to his wife, or any part of his family, under the age of sixteen," which the commissioners shall by any rule, &c. declare to be considered by way of loan, shall be considered as a loan to such poor person, whether any acknowledgment or engagement to pay the whole, or any part

of the sum, has been taken from such poor person or not (s. 58). And in such cases of relief by loan, or what is so deemed a loan, the overseers, &c. may summon any such poor person, and his master, or some one on his master's behalf, to appear before any *two* justices, to show cause why the whole, or part of any wages due, or which may become due to such poor person, should not be paid to the overseer, &c.; and if no sufficient cause to the contrary should appear, the justices may direct such master to pay in one sum, or by weekly or other instalments, the amount of such relief as shall remain unpaid to such overseer, &c. which payment to the overseer shall be a good discharge to the master; and if such master refuse, or neglect to make such payments as shall be ordered to such overseer, the same may be enforced against such master, in the like manner as penalties and forfeitures are recoverable under this act (s. 59).

So much of 43 George III. c. 47. as requires relief to be given to wives and families of substitutes, hired men, and volunteers of the militia, is *repealed;* and no relief can be ordered under that statute.

Justices are to certify, at the foot of each indenture, that the rules of the commissioners have been complied with in binding poor children apprentices; and indentures without such certificate are *not binding*. But the existing authority of the justices between the master and apprentice remains unaltered (s. 61.)

Owners of property and rate-payers may borrow money on the security of the rates for the purposes of emigration, with the consent of a meeting duly convened; but the sum so raised shall not exceed one-half of the average yearly rate for the three preceding years, which shall be applied as the commissioners shall direct. But such direction to raise money must be confirmed by the commissioners, or be of no effect, and the time of repayment of any sum so charged upon the rates shall not exceed five years from the time of borrowing. But any proportion of such sum shall be *recoverable* against any person above the age of twenty-one years, who, or whose family, or any part of them, having *consented* to emigrate, shall *refuse* to emigrate after any expenses have been incurred, or having emigrated, shall return, in the same manner as relief given by way of loan to poor persons is recoverable (s. 62).

Overseers may apply to the commissioners of exchequer bills, under the act of 57 George III. c. 36, for advances of money for the furtherance of any of the purposes of this act;

and the exchequer commissioners are authorized to make such advances on the security of the rates (s. 63).

No settlement shall be acquired by *hiring* and *service*, nor by *residence* under such hiring, nor by *serving* an *office* (s. 64). And no person under any contract of hiring and service, not completed at the time of the passing of this act shall acquire, or be deemed or adjudged to have acquired, any settlement by reason of such hiring or service, or of any residence under the same (s. 65).

No settlement shall be acquired or completed by occupying a tenement, UNLESS the person occupying the same shall have been *assessed* to the poor rate, and shall have *paid* the same, with respect to *such* tenement, for *one year* (s. 66).

No settlement shall be acquired by being apprenticed in the sea service, or to a householder exercising the trade of the seas as a *fisherman*, or otherwise, nor by any person *now being* such an apprentice, in respect of such apprenticeship (s. 67).

No person shall be deemed to retain any settlement, gained by virtue of any possession of any estate, or interest in any parish, any longer than such person shall *inhabit* within *ten miles* thereof; and such persons, ceasing to inhabit within such distance, and afterwards becoming chargeable, shall be removed to the parish wherein previously to such inhabitancy he may have been legally settled, or in case he may have subsequently gained a legal settlement in some other parish, then to be removed to such other parish (s. 68).

All previous statutes, relating to *liability* and *punishment* of the *putative* father, and to the *punishment* of the *mother* of *illegitimate children*, are REPEALED (s. 69). All *securities* and *recognizances* for indemnity of parishes against children likely to be born bastards, are null and void from the passing of this act; and all persons then in custody for not giving such indemnity, to be discharged from the passing of this act (s. 70).

Every child which shall be born a bastard, after the passing of this act, shall follow the settlement of the mother until such child shall attain the age of *sixteen*, or acquire a settlement in its own right; and such mother, so long as she shall be unmarried, or a widow, shall maintain such child as part of her family until the age of sixteen; and all relief granted to such child while under the age of sixteen, shall be considered as granted to such mother; but the liability of such mother to cease on the marriage of such child, if a female (s. 71).

When a child, born a bastard, becomes chargeable to any parish on account of the inability of the mother to provide for its maintenance, the overseers, &c., after *diligent inquiry* as to the father of such child, may apply to the *next general quarter sessions* of the peace within the jurisdiction of such parish, &c., for an order upon the person whom they charge as the putative father, to reimburse the parish, &c., for its maintenance: and the Court, if satisfied, after *hearing the evidence* of both parties, that the person so charged is really and in truth the father of such child, it shall make such order as shall appear just and reasonable; but no such order shall be made, unless the evidence of the mother shall be *corroborated* in some *material particular* by other *testimony*, to the satisfaction of such Court:—and such order shall in no case exceed the *actual expense* incurred, or to be incurred for the maintenance of such bastard child while so chargeable; and shall continue in force only until such child shall attain the age of *seven years*, if he shall so long live:—and *no part of the money paid by such putative father shall at any time be paid to the mother, nor in any way applied* to her maintenance or support (s. 72). No application shall be made to the sessions for such order, without *fourteen days'* previous notice to the alleged father; but the costs of the maintenance of the child may be calculated *from the birth*, if the application be heard within six months after such birth. And if the Court make no order on such an application, it shall direct the overseers, &c., to pay *full costs and charges* to the person against whom the application was made (s. 73). If the party charged does not appear, the Court may enter into the case, unless an agreement under the hand of the party is produced by the overseer, &c., to abide by the order of the Court without hearing evidence; but even then the Court may require evidence if it think fit (s. 74). And the party summoned, if suspected of intending to abscond, may be required to enter into a recognizance for his appearance, and may be committed on refusal (s. 75). When payments get into arrear, the putative father may be proceeded against by distress, or attachment of wages, for such arrears, costs, &c. (s. 76).

No person employed in the administration of the poor-laws, to furnish, for his own profit, goods or provisions given in parochial relief (s. 77).

Sums of money, assessed by justices on the father, grandfather, mother, grandmother, child, &c. of any poor person for his relief, under 43 Elizabeth, c. 2, s. 7; and all

penalties, &c., for default of the payment of such sums, may be recovered as penalties under this statute (s. 78).

From November 1, 1834, no person can be removed under any order for being chargeable, until *twenty-one* days after a notice in writing, with a copy of the order, and of the examination on which it was made, shall have been sent by the overseers, &c., obtaining such order, to the overseers of the parish to which it is directed; unless three or more of the overseers, &c., last aforesaid, agree in writing, under their hands, to submit to such order before the twenty-one days have elapsed. And if notice of appeal shall be received against such order within the said twenty-one days, the removal shall not take place until the time for prosecuting the appeal has expired; and if prosecuted, not till its final determination (s. 79). In case of appeal, the overseers, &c., appealing, shall have access to examine the party touching his settlement; and, if necessary, to take him out of the removing parish for such purpose, at the expense of the parties appealing (s. 80). From the 1st of November, 1834, where *notice of appeal is given*, the overseers, &c., appealing, shall, with such notice, or *fourteen* days at least before the first day of the sessions where the appeal is to be tried, send or deliver to the overseers of the other parish a statement in writing, under their hands, of the *grounds of such appeal*, without which the appeal cannot be heard; and neither appellant nor respondent shall give evidence of any other ground of removal, or appeal, than those set forth in the *order*, *examination*, or *statement of grounds* of appeal, as aforesaid (s. 81). The parish, &c. losing the appeal, shall pay such costs as the Court may direct (s. 82). And parties making *frivolous* or *vexatious* statements, in such order &c., or grounds of appeal, are liable, in the discretion of the Court, to pay the whole, or any part of the costs, &c. incurred by the other party (s. 83). The costs of relief are to be paid by the parish to which the poor person belongs, but only from such time or *notice* of such poor person having become chargeable, shall have been sent by the relieving parish to the parish to which he may be adjudged finally to belong; and relief under a suspended order is not recoverable, unless notice, as before stated, is sent of such order, with a copy of the examination, &c. (s. 84).

The commissioners are authorised to call for, and publish accounts of all estates given in charity, or held in trust for the poor, or which may be applied in diminution of the poor rate; such statements to be open to the inspection of the

owners and rate-payers; but this clause does not apply to any *voluntary contributions* of the inhabitants (s. 85).

Advertisements, under the direction of the commissioners, for the purposes of this act, and bonds, assignments, &c. entered into under its provisions, are not liable to the stamp duty (s. 86). And bonds, &c. under 22 George III. c. 83, *for the better relief and employment* of the poor, are also exempt from *stamp duty* (s. 87). Letters to and from the board of commissioners are free of postage; letters sent to them must be directed to the "*Poor Law Commissioners,*" at their office in London; and any letters sent under cover, and not relating *solely* to the business of the act, will be transmitted to the post-office, and charged* (s. 88).

"All payments, charges and allowances, made by any overseer or guardian, and charged upon the rates for the relief of the poor, contrary to the provisions of this act, or at variance with any rule, order, or regulations of the said commissioners," are declared *illegal*, notwithstanding any law, custom, or usage, to the contrary; and justices are required to disallow them in all accounts that may be presented to them; and no allowance by any justice shall exonerate or discharge such overseer or guardian from any penalty or legal proceeding, to which he may have rendered himself liable for having acted contrary to the rules, &c. of the commissioners, or the provisions of this act (s. 89).

Leaving any summons under this act at the usual or last known abode of the party summoned, is good and sufficient service (s. 90.)

The penalty under 6 George IV, c. 80, for introducing spirituous liquors into workhouses, is repealed (s. 91), and persons now so offending may be apprehended by the master of the workhouse, or other officer, and taken summarily before a justice of the peace, who may convict in any sum *not exceeding ten pounds;* and, in default of payment, commit the offender for any time not exceeding *two calendar months,* unless the penalty be sooner paid (s. 92).

Masters of workhouses allowing the use of spirituous liquors, or subjecting any adult person to *corporeal punishment,* or confining any such person for any offence longer than *twenty-four hours,* or such further space of time as may be necessary to take such person before a justice of the peace,

* There is a penalty of £100. and dismissal from office, for the persons in the commissioners' office, who shall connive at the transfer of any letters, &c. not relating solely to the purposes of the act.

or in any other way ill-treating, or being guilty of any other misbehaviour, or misconducting himself with respect to any poor person, every such master or officer, upon complaint of the overseers, &c. or any such poor person, may be convicted by any *two justices* in any sum not exceeding *twenty pounds*; and, in default of payment, may be committed for any time not exceeding *six calendar months*, or until the penalty be paid. And the justices may order any portion of salary &c. to be stopped towards the payment of such penalties (s. 93). And the *two preceding* clauses are to be placed, printed or written, in one of the most *public places* of the workhouse, and *kept legible*, and renewed from time to time, on penalt of *ten pounds* upon the master (s. 94).

No inmate of a workhouse shall be obliged to attend any religious service contrary to his religious principles; nor shall any child be educated in such workhouse in any other religious creed than that professed by the parents of such child, and to which such parents shall object, or in the case of an orphan to which the godfather, &c. shall object; and it shall be lawful for any *licensed* minister of the religious persuasion of any inmate of such workhouse, at all times in the day, on the request of such inmate, to visit such workhouse for the purpose of affording religious assistance to such inmate, and of instructing his child or children in the principles of their religion (s. 19).

Overseers, and other officers, wilfully disobeying the orders of justices and guardians for carrying into effect the rules, &c. of the commissioners, or the provisions of the act, to forfeit for every offence, on conviction before two justices, any sum not exceeding five pounds, (s. 95). but no overseer to be prosecuted for not executing any *illegal* orders of justices or guardians (s. 96).

Overseers, or other officers, purloining or wasting any monies or goods belonging to the parish, &c. to forfeit, on conviction by two justices, any sum not exceeding twenty pounds, with treble the value of the money or goods, and be afterwards incapable of any office relative to the relief of the poor (s. 97).

Any person wilfully disobeying the rules, &c. of the commissioners, or being guilty of any contempt of them when sitting as a board, shall, on conviction before two jus tices, incur a penalty of not exceeding *five pounds* for a *first offence*; for a *second offence, not less* than *five pounds*, nor exceeding *twenty pounds*; and for a *third*, or any *subsequent* offence, the offender shall be liable to be indicted for a

misdemeanor, and pay on conviction any fine *not less* than *twenty pounds*, with such imprisonment, with or without hard labour, as the Court may direct (s. 98).

All penalties and forfeitures inflicted or authorised to be imposed by this act, may be levied by distress and sale of the goods and chattels of the offenders, by warrant under the hands of two justices, the overplus, if any, to be returned to the owner; and where penalties are not paid on conviction, the justices may *detain* offenders in custody until a return shall be made to the warrant of distress, unless they give security for their appearance on a day to be named for the return of such warrant, not being more than *seven days* from the taking of such security; and if no sufficient distress can be had, the justices may commit for any time not exceeding *three calendar months*, unless the penalties, costs, &c. are sooner paid. All such penalties shall be paid in aid of the poor rate of the parish, &c. in which the offences, shall have been committed (s. 99); and owners, rate-payers, and inhabitants of such parish, &c. are competent witnesses for the recovery of any such penalty, &c. (s. 100). The commissioners, assistant-commissioners, or any justice to whom complaint in writing may be made of any offence under this act may summon the party complained of to appear before two justices, who shall hear and determine the matter, and, on proof of the offence, convict the offender, adjudge him to pay the penalty, &c. incurred, and proceed to recover the same (s. 101).

A distress under the act is not to be deemed unlawful, nor the party making it a trespasser, for want of form in the proceedings; nor the party distraining be deemed a trespasser, *ab initio*, on account of any after irregularity: but the person aggrieved may recover full satisfaction for any special damage in an action on the case, unless tender of sufficient amends shall be made by the party guilty of such irregularity, &c. before such action shall have been brought; and where no tender has been made by the defendant in such action, he may, with leave of the court before issue joined, pay into court such sum of money as he may think fit, and such judgment shall be given as in other actions where the defendent is allowed to pay money into court (s. 102).

Persons convicted under this act in penalties *exceeding £5*, and finding themselves aggrieved thereby, or being aggrieved by any order "made under the provisions of this act, as the putative father of any bastard child, may

appeal to any general or quarter sessions of the peace to be held in and for the county, riding, or division, in which such order shall have been made, or conviction taken place, within four calendar months next after the cause of complaint shall have arisen; or if such sessions shall be held before the expiration of one calendar month next after such cause of complaint, then such appeal shall be made to the next following sessions, either of which courts of sessions is hereby empowered to hear, and finally determine, the matter of the said appeal," and make such order as they shall deem meet, which shall be conclusive on all parties; provided that persons so appealing shall give, or cause to be given, at least *fourteen days' notice* in *writing*, of the intention to appeal, and the matter or cause of such appeal, to the respondent: and within five days after giving such notice enter into a recognizance before *some* justice, with sufficient securities, conditioned to try such appeal at the then next general sessions, or quarter sessions, of the peace, which shall first happen, and to abide the order of, and pay such costs as shall be awarded at the said sessions, or any adjournment thereof; and the justices, on finally determining such appeal, may award such costs to the party appealing, or appealed against, as they think proper; their determination on the premises being binding on all parties (s. 103).

No action, &c. shall be commenced against any commissioner, or any other person, for any thing done under the authority of this act, until *twenty-one days'* notice, in writing, has been given to the party against whom it is intended to proceed; nor after sufficient satisfaction, or tender thereof, has been made to the party aggrieved; nor after *three months* after the act committed for which such action, &c. shall be brought: and every such action shall be laid and tried only where the cause of action shall have arisen; and the defendant may plead the general issue, and give this act, and any special matter, in evidence; and if the matter or thing appear done by virtue of this act, or such action was brought before twenty-one days' notice, or that sufficient satisfaction was made or tendered, or that such action was not commenced within three months, as aforesaid, or that it was laid in any other country, as aforesaid, the jury shall find for the defendant. And if the jury find for the defendant, or the plaintiff become nonsuit, or suffer discontinuance of such action, or if upon any demurrer, judgment shall be given for the defendant, the defendant in such cases shall have

his costs, charges, and expenses, as between attorney and client; and shall have such remedy for recovering the same as any defendant may have for his or her costs in any other case by law (s. 104).

No rule, order, or regulation of the commissioners, or assistant commissioners, shall be removable, by *certiorari*, into any court of record except the King's Bench; and any rule, &c. which shall be removed into the King's Bench shall continue in full force, and be obeyed, as if it had not been removed, unless and until the same shall be *declared* illegal by that court (s. 105); and no application shall be made for any writ of *certiorari* for the removal of any such rule, &c. except to the judges when sitting in the said court, nor unless notice in writing shall have been left at the office of the commissioners at least ten days previous to such application being made, and in which notice shall be set forth the name and description of the party, by or on behalf of whom, and the day on which it is intended to make such application, together with a statement of the grounds thereof, when it shall be lawful for the commissioners to shew cause, in the first instance, against such application; and the court may hear and determine the same upon the grounds set forth in such notice (s. 106). But previous to any writ of *certiorari* being issued, the parties applying shall enter into a recognizance, with sufficient sureties, before one of the justices of the King's Bench, or a justice of the peace in the place where such person shall reside, in the sum of £50, to prosecute the same with effect, at his own cost, without any wilful or affected delay, and in default thereof, or in the event of such rule, &c. being deemed legal, to pay the commissioners' costs, &c. as taxed by the said court, within ten days after demand made of the person who ought to pay them; and upon oath made of the demand, and refusal of payment, such costs may be recovered as penalties, &c. under this act (s. 107).

If, upon such hearing, the court order such rule, &c. to be quashed as illegal, the commissioners shall forthwith notify the same to all the parishes, &c. to which it has been directed, and the rule, &c. shall be null and void from the time of receiving such notice; but the notice is not to annul any contract, &c. made under the rule, &c. to the period of notice of its illegality; and no person is to be answerable for any act or thing done under the authority of the rule, &c. before the receipt of such notice (s. 108).

This statute concludes with an interpretation clause, affixing the following definitions to various words and expressions employed in the several clauses:

Auditor, any one employed to examine parochial accounts, except justices by virtue of their office.

General rule, any rule, &c. addressed by the commissioners to more than one union, or more than one parish, not forming a union, or not to form a union under such rule.

Guardian, any officer in a parish, or union appointed as manager of the poor, or for the distribution or ordering of relief from the poor rate under *any* act of parliament.

Justice, or Justices of the Peace, all justices for counties or other divisions, &c. except where otherwise provided by the statute.

Oath, to include affirmations of quakers, &c.

Orders and Regulations, to include all rules, &c. for the management of the poor, directed to any *one* parish or union.

Officer, to extend to any one, clerical, medical, or others employed in carrying this statute into effect.

Overseer, to include overseers, churchwardens, so far as they are authorized to act in the management of the poor, or the poor rate; assistant overseers, and other officers paid or unpaid to carry the provisions of this act into effect.

Owner, any one in the actual occupation of property rated to the poor, or receiving the rack-rent, as owner, mortgagee, or other incumbrance in possession.

Rack-rent, to mean any rent not less than two-thirds of the full improved net annual value of any property.

Parish, any place, or division of a place, maintaining its own poor, whether parochial or extra-parochial.

Person, any body politic, corporate, or collegiate, aggregate, or sole, as well as an individual

Poor, any poor person applying for or receiving relief.

Poor Law, every statute in being for the management or relief of the poor, or relating to the execution of the same.

Poor Rate, any contribution for the assistance of the poor.

General Quarter Sessions, any general *or* quarter sessions for any division, unless otherwise expressed in the statute.

Union, any number of parishes united under this Act, or that of 22 George III. c. 83, or any local statute.

United Workhouse, any workhouse of a union.

Vestry, any meeting of inhabitants convened by such notice as would be requisite to assemble an open

customary, or select vestry, for any business relating to the poor.

Workhouse, any house, &c. for lodging and maintaining the poor, at the expense of the parish.

The *singular* number to extend also to the plural, in persons, matters, and things, and the masculine to imply also the feminine gender, in application to persons alluded to in the statute.

Having thus given a full abstract of this very important experiment in legislation on the difficult subject of the poor laws, divested of most of its technical phraseology, we have only again to request a very careful perusal of it by those who may be interested in its provisions.

THE POOR RATE.

THE great duty of the overseers, &c. is the GENERAL RELIEF of the POOR, for which they are endowed with the authority of rating the property of the parishioners in such equitable proportions, as may be sufficient to raise the sum required.

This rate may be raised weekly, or otherwise, at the discretion of the overseers; and it may be even made progressively for the ensuing three or six months, though it may be appealed against and quashed if made so long in advance as to aggrieve any parishioner; and a rate for the whole year is illegal, as well as a *standing rate*, which may become unjust.

The churchwardens and overseers may make the poor-rate without the concurrence of a vestry; but this is never advisable, and is rarely attempted. The following notice is generally given of the meeting for making a rate, being read in church, &c., as directed, with notices. by the churchwarden.

Parish of

Notice is hereby given, that the inhabitants of this parish, [*or, as the case may be*] are required to meet in vestry on , the day of next, at the hour of , to concur with the churchwardens and overseers of the poor, in making a rate for the immediate relief of the poor of this parish.

A. B. Vestry Clerk.

The poor-rate should be made on every inhabitant householder, and occupier of lands, houses, tithes, mines, and in general all property from which a profit is derived.* But only such occupiers are rateable as have such an exclusive occupation as will enable them to maintain actions of trespass. Nor can the owner of personal property, not mentioned in the statutes, be rated in respect of it, unless he reside in the parish where the property lies; but where private statutes make the rate leviable on the stock, the owner is liable, though not resident.

Land is to be rated according to its value; and any improvement in the value, such as the discovery of a mineral spring, or its conversion into a reservoir, dock, &c. will render it liable to a rate on the improved rent. Lands given to a hospital are rateable if any beneficial occupier exists; but this is generally avoided, by having nominal trustees, who take no benefit, and therefore are not rateable. This extends to lands given to charity schools. *Waste lands*, when improved, may be adjudged assessable by the sessions, to the poor of the nearest parish; and if parish B. have a claim on enclosed waste in parish A. the allotment given to B. may be assessed to the poor of A. A mere *right of common* is *not* rateable as being an incorporeal inheritance; but land to which it is attached may so become of higher value, and be rated accordingly. And even a right of common, exercised by a corporate body, becomes rateable; but a mere easement, or right of way, is not rateable.

SALEABLE UNDERWOODS are rateable; and this term is now generally applied to any species of wood which grows expeditiously, and sends up many shoots from one stool, the root remaining perfect, and producing new shoots, and so yielding a succession of profits.

Quit rents, heriots, and casual profits of a manor, are not rateable.

Mines, generally, are not rateable, but the landlord,

* Distinct families, occupying separate distinct tenements in the same house, may be rated;—but by 59 Geo. III. c. 12, owners, or receivers of rents of houses, &c. let for *less* than a year, at rents from 6*l.* to 20*l.* per annum, shall be assessed to the poor rate instead of the occupiers; and the goods of the occupiers may be seized for rates to the amount of any rent actually due, the receipts for the rates to be valid discharges for so much of the rent. But this act does not extend to cities, boroughs, or towns corporate, where the right of voting for members of parliament depends upon the rating.

entitled without risk to a part of the produce, may be rated.

Coal Mines are rateable by statute, at the rent they will bring.

Lime works, slate works, and clay pits, are *not* rateable.

Canals are rateable, according to the increased value the land has acquired from the purposes of the canal, at the rent it will bring, except, as in some cases, the statute restricts the rate to the previous value of the land. *Docks* are rateable, with the same exception. *Water Companies* are also rateable, with reference to the sum paid on the pipes; and *Gas Companies* on the sum the machinery would let at.

Tolls on roads and canals are rateable, if they arise out of local real property; and the profits of a weighing machine on a public road; but some person must hold a beneficial occupation. Tolls are rateable, when at all, in the place where they become due.

Houses are rateable at the *existing annual value;* that is, what they are reasonably worth, subject to rates, taxes, and repairs, although a considerable sum of money may have been expended upon them by the occupiers. And it has been held, that premises let at a higher rent in consequence of certain machinery being let with them, though no part of the premises, may be rated at the higher profit received in consequence.

Personal Property.—It has been ruled that *stock-in-trade* of parishioners resident in the parish is rateable to the poor, but the decision is rarely acted upon; and the stock-in-trade of a farmer is held *not* to be rateable.

Ships are rateable in the parish to which they belong, and, if generally in a particular parish, may be rated if absent; and the owners of post-office packets are not exempt. Fisheries, except incorporated, are exempt.

Profits, earned by *personal labour*, as wages, salaries, fees, &c., are not rateable; nor *household furniture*, &c.

Public Property is not rateable, except in cases where public officers have more accommodation than the discharge of their duties requires; so officers of the army, having had accommodations for their *families*, &c., in barracks, have held rateable to the poor.

Crown Property is not rateable in the hands of the crown; but it may become so in the hands of its officers or servants, and the enjoyment is beneficial, no matter whether they pay by rent or service. So a ranger of a royal park is

rateable for enclosed lands yielding profits, and the herbage of a park, if profitable.

Archbishops and *Bishops* are rateable for their palaces.

Tithes are rateable by the express terms of 43 Eliz.; and any sum of money paid in lieu of them, is also liable to the poor rate.

Meeting Houses, where no rent is received from pews, nor any pecuniary advantage derived, are not rateable; but if any profit is derived, they must be rated, although the whole may be expended in repairs, salaries, &c.

The general principle of rating property is tolerably clearly stated by Lord Kenyon, who has laid it down as a maxim, that "in whatever the owner makes his estate more valuable, he is liable to contribute to the relief of the poor in proportion to that improved estate; and *whatever* be the *proportion* of rating in a parish, the rate must be *equally* made on all persons;" as "there cannot be one medium of rating for one class of persons, and another for another class."

The poor rate may be made in *advance*, or weekly, according to the exigencies of the parish, and the discretion of the overseers, &c. but custom generally determines the mode of assessments as to time. And persons who would be aggrieved by a rate made in advance, on account of their removal from the parish before the expiration of the time for which it was made, may appeal against it to the sessions, and obtain redress, if the overseers refuse to make them an equitable allowance. The rate may also be appealed against on any other reasonable, equitable, or legal consideration. The Act of 17 Geo. II. c. 38, s. 12, provides, that when any person shall "come into or occupy any premises from which another person assessed shall be removed, or which, at the time of making the rate, was empty or unoccupied, every person so removing and coming in, shall pay the rate in proportion to their respective occupations, in the same manner, and subject to the same penalty, as if the person removing had not removed, or the person coming in had been originally assessed," and in case of any dispute between the incoming and outgoing tenants, their proportions are to be adjusted by the magistrates.

After the rate has been agreed to, the following is the form of the allowance and publication of the rate.

"A rate of assessment on the several persons here under named, inhabitants of the parish, [township, hamlet *or* precinct, *as the case may be*] of in the county of

made and assessed this day of one thousand eight hundred and by us whose names are here underwritten, being churchwardens and overseers of the poor of the said parish, by and with the consent of his majesty's justices of the peace for the said county, for and towards the necessary relief of the sick and impotent, and other the poor of the said parish, and for other the purposes mentioned in the several acts of parliament relating to the poor, being the first, [second, *or* third, *as the case may be,*] rate for the said purposes for the present year 18

Names of Occupiers.	Description of Property in respect of which the Assessment is made.	Annual Value at which it is rated.	Sums at which it is assessed.
		£ *s.* *d.*	£ *s.* *d.*
A. B.	50 Acres of land, situate in		
C. D.	House and Garden . . .		
E. F.	Shop and Warehouse . .		
G. H.	Farm and Buildings . . .		
I. K. &c.	Amount of Tithes . . .		

Assessors { T. S. / W. B. } *Churchwardens.* { L. M. / C. H. } *Overseers.*"

When the rate is made in open vestry, it is usual for some of the inhabitants to sign the rate, although such signatures are not essential to the validity of the rate; but where the consent of the vestry is obtained, it is generally certified on the assessment paper in the following form:

"We, whose names are hereunder written, being inhabitants of the parish of aforesaid, have perused and considered the above assessment, and do hereby declare that the several sums above-mentioned are rated upon the respective persons above named, by our approbation, and that such rate is an equal rate to the best of our judgment.

A. B. | T. R. } *Parishioners.*"
S. L. | M. O. }

After this, the assessment is to be signed by two justices, when it becomes operative; but any *alteration* of the rate *after* the allowance by the magistrate will render it *invalid;* and even after such allowance it cannot be legally collected until after publication in the parish church on the Sunday next after such allowance, 17 George II.

c. 3, s. 1. This publication is made by the parish-clerk, reading aloud a notice to the following effect:—

"Notice is hereby given, that a rate of in the pound was made on the day of instant, by the churchwardens and overseers of the parish [*or* township, *&c.*] of for the immediate relief of the poor of the said parish, for the half year commencing [*or as the rate is otherwise made*], and that the said rate was on the day of duly allowed by A. B. and C. D. esquires, two of his majesty's justices of the peace, acting in and for the division [*or* hundred, *&c.*] of in the county of pursuant to the statute in that case made and provided.

P. Q. } *Churchwardens.*"
R. S. }

This publication is then attested by the minister thus:—

"Published in the parish church of the day of 18 T. W. *Minister.*"

Persons neglecting or refusing to pay the rate, when thus formally made according to the statute, may be summoned before a magistrate,* to appear and shew cause why the rates are not paid; and on proof on oath of the due making, &c. of the rate, and the service of the summons, and that the rate was duly demanded and refused, or neglected to be paid, the magistrate will grant a distress warrant directly, that the defaulter's goods and chattels shall be distrained and sold within a certain time, to be limited in the warrant, not being less than four nor more than eight days from the issuing of the warrant, 27 George II. c. 20. And such goods may be seized in any place within *the same* county or precinct, 17 George II. c. 38. And upon oath that no sufficient distress can be found in the same county, &c. being made before a justice of any other county where the defaulter may have *conveyed* his goods, they may be seized and sold in such other county, 54 George III. c. 170. And if no distress can be made upon his goods, the defaulter may be committed to gaol until such payment be made; an extraordinary power conferred by 43 Elizabeth. c. 2; but, as may be imagined, very rarely resorted to in practice.

* The only objections to the payment that can be urged before the magistrate, are, 1. an offer to, and refusal of, the money by the collector; 2. that the rate was not duly published; 3. that the party is not liable; 4. that the magistrates who allowed the rate had no jurisdiction.

Goods, &c. may be seized after the lapse of seven days from the time when the rate was legally demanded, 54 Geo. III. c. 170; and though the defaulter may give notice of an appeal, he must pay the rate, or be liable to the distress; but after giving such notice of appeal, no proceedings are to be taken or carried on, to cover a larger amount than the party or previous occupier of the same premises, was rated in the last preceding rate, 41 Geo. III. c. 23.

Two or more justices in petty sessions, on proof upon oath of *inability* to pay, and with the consent of the parish officers, may excuse payment from any poor person, and strike his name out of the assessment, 54 Geo. III. c. 170.

AN APPEAL AGAINST THE POOR RATES,

Is granted by 17 Geo. II. c. 38, which enacts, that where any parishioner "feels himself aggrieved by a rate, either on account of its *illegality*, *informality*, or *inequality*, or has any material objection to any person put on, or left out of any such rate or assessment, or the sum charged to any person mentioned therein, or shall find himself aggrieved by any act done or omitted by the parish officers, he may, on giving *reasonable* notice,* to the churchwardens and overseers of the parish or place, appeal to the next general or quarter sessions of the peace for the county," &c.

The notices of appeal must be given in writing, signed by the party appealing, or by his attorney, and left at the ordinary place of abode of the churchwardens and overseers, or any two of them, but it is better to serve them all. The notice must set out very particularly and precisely the grounds of the appeal on which it is proposed to rest; among which the following are the most common:—

1. That the person appealing ought not to have been rated.

2. That the appellant was over-rated, or that other persons were under-rated in the assessment.

3. That the rate was bad upon the face of it, from want of formality, &c.

4. That the rate was made by persons not authorized to do so.

5. That it was made for an improper or unnecessary purpose.

* The time of notice required is regulated by the custom of the county, city, &c. which may be known by inquiry of the clerk of the peace.

6. That it was made for an improper period.
7. Or, that it was not duly made and published, &c.

The notice of appeal may be given in the following form:—

"To the churchwardens and overseers of the poor of the parish of in the county of

"Take notice, that I, B. J. an inhabitant of and occupier of messuages, lands, tenements, and hereditaments, in the parish of do intend to enter and prosecute an appeal at the next general quarter sessions of the peace to be held at in and for the said county of against a rate or assessment made by you, and allowed by M. G. and K. L., esquires, two of his majesty's justices of the peace in and for the said county, being the first [*or* second, *&c.*] rate of in the pound, upon the inhabitants of the said parish of for the relief of the poor of the said parish for the year 18 and which rate is dated the day of last. And I do hereby further give you notice, that my objections to the said rate, and my reasons for appealing against the said rate,* are that you have left out and omitted in the said rate the names of O. P. and S. A. who are persons occupying property within the said parish, rateable towards the relief of the poor of the said parish, and have neglected to rate, charge, or assess them, to wit, the said O. P. for a messuage, tenement, or dwelling-house, situate at within the said parish of and the said S. A. for a piece or parcel of land, situate at in the said parish; and for that the said rate is in other respects unequal, unjust, defective, and informal. Dated this day of 18

"(Signed) J. P."

The statute 41 George III. c. 23, requires also, when appeals are made that other parishioners or occupiers are rated too high, or too low, or not rated at all, or rated where they ought not to have been, or any other cause that requires an alteration in the assessment, that notice must be given to the persons so interested, as well as to the churchwardens and overseers.

After giving the notice of appeal, care must be taken by the appellant to have the case set down or entered with

* If for other grounds of objections they must be fully stated. It is not enough to state the rate to be unequal, unjust, or informal, without stating the nature of the inequality, injustice, or informality.

the clerk of the peace some days before the sessions commences, and the brief delivered to counsel in due time.

The appellant, however, must pay the rate, notwithstanding the notice of appeal; but if the rate be *amended* or *quashed*, he will have credit given to him for the sum so paid in the following effective rate. Several occupiers may join in an appeal arising out of a *common* cause; but not where the causes of complaint are distinct; and all inhabitants liable to be rated, or rated, are competent witnesses in such appeals, 54 George III. c. 170.

To enable persons aggrieved to appeal with due effect, the rates and assessments for the relief of the poor must be entered in a book, attested by the parish officers, within fourteen days after such appeals from such rates are determined, 17 George II. c. 38. And parishioners are entitled to inspect such books on payment of one shilling; and may have copies of the whole, or any part, on payment of *sixpence* for every twenty-four names, on penalty of twenty pounds for refusal by the parish officers, 17 George III. c. 3.

RATING IN AID OF OTHER PARISHES.

By 43 Elizabeth c. 2, if two justices find the inhabitants of any parish unable to levy among themselves sufficient sums of money for the purposes of that act, they may assess any other parishes, &c. within the hurdred, and direct them to pay such sums to the poorer parish as the justices think fit. And if the justices find no parishes in the hundred able to relieve the poorer parish, the justices in general or quarter sessions shall rate any other parishes, &c. in the county for that purpose. When the justices, or the sessions, have ordered the amount to be raised, the overseer must make the rate on those who are to pay it.*

The *management*, *relief*, *maintenance*, and *employment* of the poor are now transferred to the commissioners under the new Poor-Law Bill; and the parochial authorities will in future act under their directions. But there are several statutes with reference to the employment of the *able-bodied and other poor*, which are not repealed by the new Poor Bill; and the provisions of which it may be useful to know.

* An extra-parochial place may be thus taxed in aid of a poor parish; and one ville may be ordered to contribute to the relief of another ville in the same parish. But one parish in a city cannot be taxed to the relief of another in the same city, if not locally situated within a hundred, or a county.

By 43 Elizabeth c. 2, the overseers, &c., with the consent of two justices, are to provide out of the poor rates a stock of flax, hemp, wool, thread, iron, or other necessary ware or stuff, to set the able-bodied poor to work. By 3 Charles II. c. 4, they are *empowered*, with the consent of two justices as before stated, to set up or use any trade or occupation, for the setting to work and better relief of the *able-bodied poor;* but it does not follow that they are *obliged* to do so, but merely that they may take such means of lessening the parochial burthens, if they deem it prudent.

By 59 George III. c. 12, the churchwardens and overseers, with the consent of the vestry, may take into their hands any land belonging to the parish, or purchase, hire, or take on lease any land within or near the parish, not exceeding *fifty acres*, and employ in the cultivation thereof, on account of the parish, any persons they are by law directed to set to work, and may pay reasonable wages to such poor persons as shall not be supported by the parish. And by 1 & 2 William IV. c. 42, the churchwardens, &c. with the consent of the lord of the manor in writing, and the consent of the major part in value of the persons having right of common, signified under their hands and seals, may inclose not exceeding *fifty* acres of any waste or common, lying in or near the parish, and cultivate the same for the benefit of such parish and its poor; or may let any part to any poor and industrious inhabitant, to be cultivated on his own account. And the power to do this is extended to the guardians of the poor of any parishes or places incorporated under 22 George III. c. 83, or under any *local act*, and to the overseers of all townships, villages and places, having separate overseers, and maintaining their poor separately.

By 1 & 2 Wm. IV. c. 59, the power to provide land, &c. is extended to enable overseers, &c. to acquire portions of forest or waste lands belonging to the crown; and they may, with the consent in writing of the lord high treasurer, or commissioners of the treasury for the time being, signified by warrant, inclose any such forest or waste land, not exceeding *fifty acres*, for the use and benefit of the poor, &c.:—and they may let any portion of such land, to any poor person, to be cultivated for his own benefit, at such reasonable rent and for such time, as the inhabitants in vestry may determine.

By 2 William IV. c. 42, the trustees of parish allotments to the poor, and the churchwardens, &c. in vestry assembled, may let portions not less than one-fourth of an acre, and not exceeding one acre, from Michaelmas to Michaelmas, at such

rent as land of the same quality is usually let for in the parish, to industrious cottagers, being day labourers or journeymen, legally settled in the parish, and dwelling within or near its bounds, who shall apply at the parish vestry in the first week of September in every year. But if the land is not duly cultivated, or the rent be four weeks in arrear at the end of each year's occupation, the tenant may be ejected at a week's notice, and the rent recovered; and possession obtained on application by the parish officers, and summons before two magistrates. No habitation is to be erected on such land; and where the land lies at an inconvenient distance, it may be let by the vestry, and more convenient land hired in its stead. The provisions of this act also extend to 1 & 2 Wm. IV. c. 49 & 59, for inclosing waste and crown lands.

The statute, 9 Geo. I. c. 7. s. 4, authorises churchwardens, &c. with consent of vestry, to hire or purchase any house, and contract with any one for the lodging, maintenance, and employment of the poor, such contractors to take the benefit of their labour; and poor persons soliciting relief, who shall refuse to be lodged, &c. shall not be entitled to relief. And two or more parishes may unite for such purpose, with consent of vestry, and approbation of a neighbouring magistrate; and the parish officers, with the consent of the parishioners, may contract for the lodging of the poor of any other parish in the same house. But all these powers must now be exercised under the directions of the Commissioners of the New Poor Laws.

By 2 & 3 Wm. IV. c. 96, it is not lawful for the churchwardens, &c. to disburse or expend any money raised for the relief of the poor, in the employment of any person in any other parish or place, in agricultural labour, or any other work.

Contractors for the maintenance of the poor are liable to the jurisdiction of the justices of the peace in the same manner as overseers of the poor, 50 Geo. III. c. 50. No contract is valid, unless the contractor be resident within the contracting parish, or the parish where the poor are lodged and maintained; or in the case of united parishes, in one of such parishes; nor unless one or more responsible and resident householders give sufficient security by bond, before the time of signing the contract, to the churchwardens and overseers for the due and faithful performance of the contract; and the contract to be void on the removal of the contractor from the parish before the expiration of the term.

No churchwarden, &c. or other person concerned in the

management of the poor, while in office, shall provide for his own profit, any goods, &c. or be concerned, directly or indirectly, in any contract, under a penalty of £100;—except where no other person can be found to supply what may be wanted within a convenient distance; in which case such persons, by the certificate under the hand and seal of two neighbouring justices, on proof of the facts being duly made on oath before them, may undertake to furnish articles for the use of the poor, 55 Geo. III. c. 137. And when contracts for supplying anything for the use of the poor, erecting buildings, &c. are to be entered into, the churchwardens, &c. are to cause notice of their intention to enter into such contracts, and of the time and place where they shall assemble for such purpose, and of the security required on behalf of the contractors, to be fixed on the outer door of the church, and inserted in one or more public newspapers, generally circulated in the neighbourhood, at least seven days previous to the meeting at which such contracts are to be entered into.

By 59 Geo. III. c. 12, s. 39, when it shall appear to the justices, or general or select vestry, or overseers, &c. to whom application shall be made for the relief of any poor person, that he might have been able to maintain himself or his family, but for his extravagance, neglect, or wilful misconduct, the overseers may, by the direction of the justices, or of the general or select vestry, or of the guardians, governors, or directors aforesaid, advance money weekly, or otherwise, as may be requisite by way of loan only, and take his receipt for, and engagement to repay every sum to be so advanced, for which no stamp is requisite; and if within one year after such loan, it appear to any two justices, on the application of the overseers, that the borrower is able to repay the whole, or any part of the money, by weekly instalments, or otherwise, they may make an order to that effect, and in default of payment, the party may be committed for *three calendar months*, or until he repay the loan. This enactment, however, seems to be superseded, although not repealed, by the provisions of the New Poor-Law Bill.

By 59 Geo. III. c. 12, s. 24, if any person permitted to occupy any parish house, or tenement, or who shall unlawfully obtrude himself therein, shall refuse or neglect to deliver up possession to the churchwardens, &c. after demand in writing signed by them, and delivered to the person in possession, or in his absence affixed to some conspicuous part of the premises, two justices, on complaint, may summon the party, by delivering the summons to him, or affixing it as aforesaid, seven

days before the hearing, and on his appearance or default, they may by warrant cause possession to be given to the churchwardens or overseers; and lands, &c., so occupied by such poor persons, may be recovered possession of in the same manner.

The power of providing, or enlarging workhouses, is now vested in the Commissioners of the Poor Laws.

Persons maintained in workhouses refusing to work at any occupation suited to their capacity, or being guilty of drunkenness, or other misbehaviour, may, on conviction, by any justice, be committed to hard labour for any period not exceeding twenty-one days.

Justices in special sessions, on application of the overseers, may appoint the keeper of the workhouse to be the governor thereof, and he may then exercise the powers conferred by 22 Geo. III. until revoked by the sessions.

CASUAL POOR,

Are persons incapacitated from employment by sudden illness, or inevitable accident, and who require immediate medical or other relief, in the place where they happen to be. This relief the parochial officers are bound to provide to the extent required by the nature of the cause, and they are punishable for neglect; and any parishioner who undertakes their duty, may recover the amount of his expences from the parish officers. Such persons cannot be removed during their infirmity; nor can the expenses of relieving them be recovered against the parish in which they have a legal settlement, but must be borne by the parish in which the sickness or accident &c. took place. This right of relief is not even limited to natural born subjects, but extends to afford foreigners necessary relief to save them from death by famine, or as a consequence of impotence.

MANAGEMENT OF THE POOR BY GUARDIANS.

Some parishes prefer the provisions of 22 Geo. III. c. 83, as amended by 33 Geo. III. c. 35, to the ordinary mode of granting relief. This act provides, that where its provisions are adopted, the visitors and guardians may make agreements from time to time, not exceeding *twelve months*, for the diet, clothing, and labour of poor persons sent to poor-houses, erected under this statute. It must be adopted at a meeting convened for the purpose, at which two-thirds in number and

value, *actually attending*, of lands, &c. within the parish, &c. shall signify their approbation and consent; and shall then nominate three qualified persons as guardians of the poor, and three others for governors of the poor-house, and shall fix salaries to be paid to them. The consent and approbation of two justices, in writing, must then be obtained, and the agreement being then registered, the parish will become entitled to the benefit of this statute. The following is the form of such an agreement:—

"It is agreed at a public meeting, duly holden this day of , at , in the county of , pursuant to the directions of an act made in the 22d year of the reign of King George the Third, for the better relief and employment of the poor, that the parish [hamlet, township, &c., *as the case may be*] of , in the said county, shall henceforth adopt, in all respects, the provisions, rules, orders, and regulations, and comply with all the requisites prescribed by the said act, and that our workhouse (*if there be one*) shall be immediately fitted up and accommodated for the purposes mentioned in the said act; [*or if there be none*, we will forthwith provide a proper workhouse, either by erecting a new one, or hiring, altering, and fitting up buildings suitable to the purpose, at some convenient place within the said parish, &c.] And we recommend G. M. and J. T. and R. D. to his majesty's justices of the peace, in and for the said county, as fit and proper persons to be guardians of the poor; and W. L. and A. B. and E. J. as fit and proper persons to be governors of the poor-house for the said parish."

Where more than one guardian is requisite, on account of the extent of the population, *two* of the three persons may be nominated by the magistrates, on the *written request* of the persons assembled in the public meeting. And in parishes which have adopted this statute, either alone, or in conjunction with any other parish, where two-thirds in number and value of the occupiers, &c. at a public meeting convened for the purpose, pursuant to notice given in the church, &c. on the preceding Sunday, agree that one guardian is insufficient, and certify the same in writing, by any two persons present, to two or more magistrates of the district, with the names of four or more qualified persons, the magistrates may appoint as many of them as they think fit to be guardians of the poor. 41 Geo. III. c. 9.

Where *two* or *more* parishes unite for the purposes of this act, the agreement must be entered into at a public meeting called, as before, in *each* of such parishes, and as soon after

as convenient, an agreement shall be entered into by the guardians of the poor of every such parish respectively, or the majority of them, according to the following form :—

"It is agreed at a public meeting, legally convened, and duly held this day of , at , in the county of , pursuant to the directions of an act made in the 22d year of the reign of King George the Third, for the better relief and employment of the poor, that the parish of , in the said county, shall from henceforth, in conjunction with the parishes [*or* township, &c. *as the case may be*] of , and adopt, in all respects, the provisions, rules, orders, and regulations, and comply with all the requisites prescribed by the said act for parishes uniting for those purposes. And that a convenient workhouse and other buildings, and necessary conveniences, shall be immediately provided, at or near , and properly fitted up and accommodated for the purposes mentioned in the said act. And we recommend to the consideration of the justices of the district, where such workhouse will be situate, A. B. and C. D. and E. F. as fit and proper persons to be guardians of the poor; and G. H. and J. K. and L. M. as fit persons to be governors of the poor-house of the said parish, &c.; and we do agree to allow the person who shall be appointed guardian a salary of £ per annum, and to the person who shall be appointed governor of the poor-house, a salary of £ per annum."*

The notice for carrying this agreement into effect must be given in the church, &c *three* successive *Sundays* before the meeting, and fixed on the church-door *fifteen* days previous to such meeting. The following may be the form :—

"Notice is hereby given, That a public meeting will be held at , on the day of 183 , at o'clock in the forenoon, to consult the owners and occupiers of land, tenements, or hereditaments, assessed at the rate of £5, and upwards, per annum, about hiring, purchasing, or building [as may be the case] a house, &c. and providing for the maintenance and employment of the poor, pursuant to the act of the 22d year of the reign of King George the Third."

(Signed, &c.)

* This agreement must specify the place where the workhouse, &c. is, or is to be situated, and the terms on which the agreement is made. It must also be entered with the clerk of the peace, or the town clerk of the county &c. where the parishes are situated, and a copy left with him for that purpose within *three months* after it is entered into.

No person can vote at that meeting, unless rated to the amount of £5, per annum to the poor, except in cases where there shall not be *ten* persons so qualified, and then *every* person rated is entitled to vote.

The guardians are required to attend monthly meetings, and are invested with powers, &c. of overseers, (except making and collecting rates) and are liable to the penalties of overseers for neglect of duty. All notices, as to the care, management, or removal of the poor, must be given to such guardians; neither churchwardens nor overseers having any right to interfere where such guardians are appointed. Notices served by mistake upon the churchwardens, &c. are to be delivered by them to the guardians on penalty of 40s. for neglect, but the notice, notwithstanding, is deemed valid.

The guardians at a monthly meeting, with the consent of the visitor. who must sign it, may make an order on the churchwardens, overseers, or collectors of the poor-rate, for what money may be necessary; the churchwardens, &c. being required to pay such sums as follows:—

1. If the parish is a single one, the overseer, &c. is to pay the guardian the sums necessary for paying the bills and other expenses of the workhouse and the poor, and take receipts expressing the purpose for which the payment is made.

2. If two or more parishes are united, the overseers, &c. are to pay the treasurer of the union their due *proportion* of the general expenses; or permit such treasurer to draw upon them, in the form following:—

" *To E. B. Collector of the Poor-rate of the Parish of*

"You are hereby authorized and directed to pay to H. M. the sum of £ for [*here state the nature of the payment*], and take his receipt for the same, which shall be your discharge for such payment. Dated this day of 18 .

" *N. O. Governor of the Poor of the Parish of* ."

These payments will be allowed in the accounts of the overseers, churchwardens, and guardians, which shall be examined at every monthly meeting, and passed quarterly by the visitor of the poor-house, after being verified upon oath before a magistrate.

The guardians on their appointment, are to nominate *three* proper persons for the office of visitor to the poor-house; and apply to two magistrates, who are required to appoint one of such three persons to the office; and to nominate a second

if the first refuse to act, and a third if the first and second both refuse; and if all decline, the guardians are to serve monthly by rotation, with the consent of the district magistrates.

The visitor is to superintend the workhouse--decide questions as to who shall be sent there—see the rules enforced—and adjust the accounts; and the guardians, &c. are to obey his directions. If not a guardian, he may appoint an accountable deputy, according to the following form:—

"I, G. A. visitor of the poor and poor-house of the parish of [*or*, of the united parishes, &c. of and], in the county of do hereby nominate and appoint T. M. to be my deputy-visitor and assistant during my will and pleasure, pursuant to the power given me by an Act passed in the twenty-second year of the reign of King George the Third, intituled, 'An act for the better relief and employment of the poor,' and authorize him to discharge the duty required of me by the said act.

"Witness my hand, this day of 18

("Signed) D. P."

The guardians are also to recommend to the magistrates one of themselves to be the *treasurer*, who shall give security to the other guardians. The treasurer is to keep the accounts, to receive and pay money, as allowed and ordered by the guardians, and to lay a monthly statement of such accounts before them. Once a year, fourteen days before the Michaelmas sessions, the treasurer is to make a fair statement of his accounts, distinguishing the various heads of expenditure, with the number of poor in the house, their age and sex, how employed, and the money earned by their labour during the year. The treasurer is to be allowed any sum not exceeding £10 per annum; and on application from two-thirds in number and value of the parishioners, &c., two magistrates may appoint a treasurer to the poor-house, with a salary not exceeding £10 per annum.

Two magistrates may also appoint one of the persons recommended as governor of the workhouse, on the application of two or more persons who have signed the agreement for adoption; such governor to be removable in case of misbehaviour or incapacity.

The offices of guardian, visitor, treasurer, and governor, determine yearly at Easter; but vacancies by death, or otherwise, may be filled up as they occur; and where the same

persons continue in office, from any omission to name others, their acts are valid.

The guardians are to provide proper buildings for the accommodation of the poor, and may sell any previously purchased: but they are not to hire houses for more than twenty-one years, nor for less than three. Visitors and guardians may take by purchase or on lease not exceeding one acre of land in a city or town, not exceeding twenty acres in the country for such buildings, &c.; and may enclose any waste, &c., not exceeding ten acres, for building, and borrow money at interest, chargeable upon the poor rate; which money, if called in by the lender, may be borrowed of other persons, by the assignment of the security by indorsement.

Persons sent to the workhouse must take an order from a guardian; but none are to be so sent except persons indigent through old age, sickness or infirmity, orphans and such other children as must necessarily be with their mothers. Infants of tender years being chargeable may be sent to the poor-house, or placed out at a weekly allowance at the expense of the parish; but parents or relations may have such children if they desire to provide for them, and no child under seven can be separated from its parents without their consent.

The guardians are to prosecute as vagrants idle and disorderly persons, able, but unwilling to work, and maintain their families; but where willing to work the guardian may agree for such labour as is suitable, and support him until employment can be found; the guardian to receive the wages towards his subsistence; and if such person refuse to work, or leave his employment, a justice may commit him on complaint of a guardian to the house of correction for not exceeding three months, nor less than one.

The poor in the house are to be maintained at the general expense of united parishes; the treasurer and governor are to provide food, &c.; the guardian to find necessary clothing; on neglect of which, on complaint to a justice, such justice, after summons, may order such clothing to be provided; and on refusal or neglect to provide it in ten days, the justice may order the governor to provide, and levy the amount and costs upon the goods of the defaulter.

The guardians shall meet on the first Monday in every month, at ten in the forenoon, to settle the preceding month's account. The money due to the treasurer is to be apportioned between the parishes, at an average of the three years preceding the agreement under this act, and in like manner and proportion at every monthly meeting. The churchwardens, &c,

must attend such meetings, with four days' notice, with such account of such average expenses, under a penalty of not more than five pounds, nor less than two, for neglect; and the money is to be paid to the treasurer at such meeting, or within one week after, for the discharge of the outstanding accounts. The treasurer is also to produce an account of all necessaries had for the use of the poor, governors, &c., to be proportioned amongst the number of persons sent from each of the parishes, for the time they have resided in the house during such month; the sum due from each parish to be stated at the foot of the account, signed by the guardians, and inspected and allowed by the visitor if not a guardian. And any justice, on complaint on oath that the proportion due from any parish has not been paid within seven days, may levy the amount by distress and sale on the goods, &c. of any guardian of the parish in default.

Poor persons detained by sickness or bodly infirmity, in passing through any place where they are not settled, must be supplied by the guardian of such place with lodging, nourishment, and clothing, until capable of being *safely* removed, and then to be examined before a justice as to their legal settlement, for removal thither: the expenses incurred, being allowed by a magistrate, to be repaid by the guardian at the legal settlement, if within the county. In case of death, to be buried where found dead, and the expenses, &c. allowed as before, to be repaid if legal settlement be found; and if not found, or not in the county, to be defrayed out of the county rate.

Guardians, or others, enticing children, poor persons, pregnant women, or sick or infirm poor, from one parish to another, without an order of removal, to forfeit not exceeding £20 nor less than £5.

Paupers embezzling, or wilfully wasting goods, &c., committed to their care, or taking away without permission goods, &c., for the use of the house, to be committed for not exceeding six, nor less than three months. [And to prevent offences of this kind, the officers are to mark all goods, &c. capable of being marked, with the word "*workhouse*," or such other mark as they think proper for identification, so that no mark is placed on wearing apparel, so as to be publicly visible when worn. 55 Geo. 3, c. 137.]

The following rules, orders, bye-laws, and regulations, are established by this act; which also gave the justices at special sessions the power of making any additions which were not contradictory to their spirit; but the new Poor-Law Bill enacts

that no such addition shall be made by the sessions after the passing of that act; after which period, all additions, alterations, &c. must be made by the commissioners.

1. That persons sent to any poor-house, capable of doing any work, shall be employed in labour suited to their strength and capacity.

2. That the governor shall keep the house, &c., and the persons who inhabit it, clean and wholesome; and employ for that purpose such of the persons sent there, who are best qualified to assist him, and also in providing and dressing victuals for the use of such poor persons; and if any poor persons refuse or neglect to perform the labour in which he is employed or directed to do by the governor, he shall be punished by *confinement** or *alteration of diet*, as the governor shall direct; and for a second offence, on complaint to some justices for the limit, the offender may be committed for any period not exceeding *two* calendar months, nor less than *one*.

3. That the apartments be adapted to accommodate the poor in the best possible manner; and the governor place in the best apartments, such as having been creditable housekeepers, are reduced by misfortune, in preference to those who are poor through vice and idleness; that separate apartments be provided for the sick, and a surgeon, &c. sent for when necessary, at the expense of the parish.

4. That poor persons liable to work, shall be called by *six* in the morning from Lady-day to Michaelmas, and *eight* from Michaelmas to Lady-day; and continue till four in the afternoon from Michaelmas to Lady-day, and from Lady-day to Michelmas till six in the afternoon, (meal times, and times for reasonable recreation, excepted.) And if any poor person refuse or neglect to work, or wilfully spoil the same, or depart from the house without leave, or be guilty of any disorder or disobedience to the rules, &c., the governor shall reprove them, and punish them by confinement or alteration of diet, as he thinks fit; and on a second offence the governor shall complain to the visitor who is authorized to order the punishment to be increased to such a degree as he shall think fit.

5. That the governor enter in a book an account of household goods, linen, furniture, and utensils provided, and of materials bought for manufacture, and goods manufactured, to be laid before the guardians every month, and before the visitor whenever he comes to the house.

* Not longer than twenty-four hours, and so much longer as may be necessary to take him before a justice.—*New Poor-Law Bill.*

6. That the governor shall visit every person in the house and their apartments once at least in every day, and take care there is no waste of fire, candles, or provisions, and see the fire and candles put out at eight o'clock between Michaelmas and Lady-day, and nine between Lady-day and Michaelmas.

7. That when any person shall die, the governor shall take care the body is removed to some separate apartment, and buried as soon as convenient; and take care of, and deliver the clothes, goods, &c. of the deceased, to the guardians of the parish to which he belonged, and which is to pay the charges of the funeral.

8. That no poor person be permitted to go out of the poor-house, nor any one to come in, except persons maintained or employed there; that no spirituous liquors shall be brought in, nor any other liquor, without permission of the governor.

9. That the rules and bye-laws shall be publicly read by the governor to all the poor persons once, at least, in every month.

10. That all the poor persons able to go to church, shall attend divine service every Sunday.*

11. That the governor, by order of the guardians, shall dismiss such persons from the poor-house, as, in their opinion, are improper to be kept there.†

Any two or more justices may order these rules to be observed in parishes within their jurisdiction, 49 Geo. III. c. 124, and they are also extended, by 50 Geo. III. c. 5, to parishes which have not adopted the provisions of 22 Geo. III., and churchwardens and overseers are invested by that statute with the powers of governors of the poor.

INFANT PAUPERS.

The maintenance of infant paupers in the seventeen parishes without the walls of London, the twenty-three parishes in Middlesex and Surrey, and the ten parishes in Westminster, is regulated by 7 Geo. III. c. 39, which enacts, that all pauper children born or admitted into any parish workhouse, *under two years* of age, and not suckled by the mother, shall be sent, within fourteen days after their birth or reception, into the country, and not less than five

* This rule is repealed by the New Poor-law Bill, which enacts, that no person shall be compelled to attend the divine service of the house; and that any one may be visited by a licensed minister.

† No *additions* or *alterations* are to be made in these rules, or those of any other statute, until confirmed by the new commissioners.

miles from any part of London and Westminster; and, above two years and under six years of age, to be sent to a distance not less than *three miles*, as aforesaid, to be nursed and maintained at the expense of their parishes.

For the first six years of their age, not less than 2*s*. 6*d*. weekly shall be paid; and, from that time, not less than 2*s*. per week. Nurses, who have any child under their care from or under the age of nine months, for twelve months, to have a reward of 10*s*. for each, if living. The children, in all cases, to be provided with proper and sufficient clothes and medicine by the parish.

Five noblemen or gentlemen shall be chosen every three years, under the title of "*Guardians of the parish poor children*;" two of them from the select vestry, or governors, &c. of the poor: but if there be no such officers, then, out of the inhabitants of the parish. If not sufficient noblemen or gentlemen, the remainder to be chosen from the principal inhabitants; and, if any refuse to act, resign, die, &c., the vacancy is to be supplied within fourteen days. The election is to take place in the vestry, in Easter week. Churchwardens and overseers for the time being are not eligible. The guardians are to have free admittance to examine into the condition of the children, and to examine all books, accounts, &c.; they are to report to the parish authorities if the life or health of any child be endangered by neglect or improper conduct; and if measures are not taken to remedy the evil, they are to inform one or more justices, who shall give such orders as the case may require. The vestry-clerk is to summon the guardians every six weeks; two make a quorum; and they may call in the churchwardens, &c., to assist.

The parish officers may send poor children, under six years of age, to the Foundling Hospital, on terms to be agreed upon; the expenses to be paid out of the poor rate; and, if not duly paid to the person authorized to receive it, one or more justice may summon the overseer to shew cause, and order immediate payment, to be enforced, if necessary, by distress and sale. The death, discharge, or apprentice of any child, is to be certified by the governors of the hospital to the vestry-clerk of the parish. Such children not to be apprenticed for more than seven years, or beyond the age of twenty-one. The apprentice-fee not to be more than £4 2*s*., of which £2 is to be paid within seven weeks after the execution of the indertures, and the remainder after service of three years;

and a list is to be made out annually of the children so apprenticed by each parish, and delivered to the company of parish clerks.

Churchwardens, or others, neglecting any duty imposed by this Act, to forfeit £3 for every offence, recoverable by distress, &c.

SELECT VESTRIES

Were originally, no doubt, usurpations, which the cupidity of the few, and the carelessness of the many, suffered to grow into customs; and, in some instances, to have established the abuse so formidably, as to bid defiance to the ordinary authority of the law, as well as to all the principles of reason and justice. Indeed, in some cases, the ancient usurpation has been adopted as the basis of modern legislation; and we find, in the 10th of Ann, c. 11 for building fifty new churches, in or near London and Westminster, that the commissioners are to appoint, in the first instance, "a convenient number of sufficient inhabitants to be vestrymen," and who are authorized on the death, removal, &c. of any one, to choose another by the majority of the remainder; a principle that can only lead to abuse, and which cannot be too strongly reprobated.

In some private statutes, for particular parishes, it is enacted that the rector, the officers for the time being, and all who have served or fined for the leading offices, constitute the vestrymen; which is merely a disguise of the mischievous principle above-noticed, and is invariably followed by similar abuses, as the parishioners have no control over the presiding junta, and who, of course, take care to have their own friends placed successively in the offices which lead them into the councils of the select.

The statute of 59 Geo. III. c. 12, commonly called "*Sturges Bourne's Act*," for the better and more effectual execution "of the laws for the relief of the poor," was an attempt to render select vestries more palatable, by giving them a more reputable origin through the medium of an election by the parishioners; and although its aristocratic principle of giving additional votes to the persons rated highest is objectionable, it has been the means, in some cases, of breaking up the management of parishes by interested juntas. By this act the parishioners may elect any number not exceeding twenty, nor less than five, to

form a select vestry, with the rector, or curate, &c., being resident and rated, and the churchwarden and overseers for the time being. The inhabitants so elected, are to be appointed in writing by a magistrate, and any three may form a quorum, not more than one of the three being a churchwarden or overseer. Vacancies are to be filled up by the appointment of others by the inhabitants: and such vestries are to act until fourteen days after the annual appointment of the overseers of the parish, meeting every fourteen days or oftener in some convenient place;—appointing a chairman by the majority, who, in case of equality, shall have the casting vote.

The vestry is to determine the proper objects of relief, with the nature and amount to be given, and to superintend the collection and administration of all monies. The overseers are to conform to their directions, and give no other relief than the vestry order, except on sudden emergencies.

Minutes, &c. of the proceedings and accounts are to be kept, signed by the chairman, and laid before a general vestry of the inhabitants in May and October every year, and at such other times as the select vestry think fit; ten days' notice being given by the churchwardens and overseers of any vestry for establishing a select vestry, or for receiving any report, &c. of the select vestry.

The provisions of the act extend to all places maintaining their poor separately, and with reference to this act, it has been decided that "where the management of parish affairs has been by ancient custom in a select vestry, such select vestry *cannot* elect persons to be appointed a select vestry under this act, for the power to appoint is expressly given to the inhabitants in vestry assembled:" and "the inhabitants at large may assemble and appoint a select vestry for the management of the poor, not interfering with any rights of the ancient select vestry." But, by this means the *ancient select vestry* may be set aside; for, to take away their control over the poor, and the expenditure of the parish funds, would be to deprive them of all temptation to remain in office.

Select vestries are also recognized by 59 Geo. III. c. 134. This statute, for building churches in populous districts, and dividing parishes into ecclesiastical districts, authorizes the *commissioners* for carrying the act into effect, with the advice of the *bishop* of the diocese, *to appoint* a select vestry of as many persons as they think fit, for the direction and management of the affairs of the parish; such

select vestry to elect new members on the death or removal of any of their number. It is singular that this principle should obtain in a statute of such recent date; but it is so, to a certain extent, by 1 & 2 Wm. IV. c. 60, which empowers parishes to resume some portion of their right by common law to open vestries.

MANAGEMENT OF THE POOR BY TRUSTEES.

In St. Mary, Islington, the management of the poor is vested in the hands of sixty trustees, assisted by the vicar, churchwardens, and overseers for the time being. The qualification of the trustees is being rated at £30 per annum to the poor rate. They are elected by the inhabitants in vestry every Easter-Tuesday, by all persons rated at £20 per annum to the poor, and vacancies are filled up as they occur. The trustees take an oath to discharge the duties faithfully, and are empowered to carry the provisions of the statute into effect; which, however, must now be done under the direction of the Poor-Law Commissioners.

RULES OF SETTLEMENT OF THE POOR.

Settlement in a parish, or the right of claiming support from its funds, was till lately acquired: 1. By birth and parentage; 2. By marriage; 3. By *hiring* and *service;* 4. By *apprenticeship;* 5. By renting a tenement; 6. By estate; 7. By payment of public taxes; and 8. By performing the duties of a parochial office.

Our law books have been long disgraced by the confusion and contradiction of authorities and decisions upon questions of settlement; but the New Poor Law *abolishes* all claim of right to settlement from the date of its passing, on account of *hiring* and *service*, and *apprenticeship*, and so far tends to simplify the subject.

Settlement by birth. All *legitimate* children follow their father's settlement, where it can be traced; if that be unknown, or the father be a *foreigner*, the children follow the settlement of the mother *before* marriage. And where the mother acquires a new settlement after the death of her husband, the children follow such settlement.

Illegitimate children follow the settlement of their mother, by the New Poor Law Bill, in all cases.

By 54 Geo. III. c. 170, all enactments respecting gaining

settlements by local acts are repealed; and persons may acquire settlements as they would have done if such local acts had never existed. But persons born in prison, or in houses licensed for the reception of pregnant women, do not obtain any settlement; and persons born in poor-houses are deemed born in the parish, &c., to which the mother belongs.

Soldiers and *prisoners*, confined in gaol, or in the custody of peace officers, may be examined by two justices as to their last legal settlement, such attested examination to be evidence of such settlement.

Settlement by marriage, is a construction of law by which the settlement of the husband is conferred upon the wife from the period of marriage; but if the husband has no legal settlement, when he dies, or abandons her, her maiden settlement revives, and she has a claim upon her original settlement for relief; and it has been ruled, that where the husband has no legal settlement in England, he *and his family* must be removed by pass to his place of legal settlement in Scotland or Ireland.

Settlement by renting a tenement. By 13 & 14 Cha. II. c. 12. a settlement was gained in any parish by renting a tenement above the yearly value of £10, and inhabiting therein for the space of *forty days;* and this act regulates all settlements obtained prior to July 2, 1819; when the statute of 59, George III. c. 150, was passed, which enacts, "that no person shall acquire a settlement in any parish," &c. by dwelling forty days in any tenement, unless such tenement be a distinct dwelling, or of land hired at the least at £10 per annum, for one whole year; nor unless such house, land, &c. shall be held, and the rent actually paid for one whole year, nor unless the whole of the land shall be within the parish where such person dwells. This act regulates settlements by rent from July 2, 1819, to June 22, 1825; when it was repealed by 6 Geo. IV. c. 57, which enacts, "that no person shall hereafter acquire a settlement by reason of settling upon, renting, or paying parochial rates for any tenement, unless such tenement shall consist of a separate or distinct dwelling-house or building, or of land, or of both *bona fide* rented in such parish or place, at and for the sum of £10 a year at the least, for the term of one whole year; nor unless such house, building, or land, shall be occupied under such yearly hiring, and the rent of the same to the amount of £10 actually paid for the term of one whole year at the least; *but that it shall not be necessary in any case to prove*

the actual value of such tenement. This statute regulates all questions of settlement by rental, from June 22, 1825, until August 14, 1834; when, by the new Poor-Law Bill, it is enacted, that in future no settlement can be acquired by renting any tenement, unless the person occupying the same shall be rated to the poor, and have paid such rate for at least one year.*

No settlement is gained by any poor inhabitant renting land under 1 & 2 Wm. IV. c. 42 & 59: nor by any person collecting or renting the tolls of any turnpike road, or canal, or any of their servants: nor by any prisoner, renting premises in the King's Bench, or the rules thereof, or his servants: nor by any person residing in the forest of Alice Holt, in the county of Southampton, for the purpose of protecting the plantations, game, &c.

A settlement by inheritable estate, however inconsiderable the estate may be, is a principle recognized by the common law. But the *purchase* of an estate only confers a settlement, where the purchase-money *bonâ fide* paid does not amount to the sum of £30, for so long a time as the purchaser shall inhabit, or occupy the estate; after which he may be removed to the parish where he was settled before such purchase, &c.

Settlement by payment of public taxes was recognized by 3 William III. c. 11; which enacted, that any person charged with and paying his share to the public taxes levied in the parish, should be adjudged to have a legal settlement there, without reference to the *amount* of rent. The 35th of George III. c. 101, enacted, that after June 22, 1795, no settlement should be gained by payment of taxes, unless the tenement was of the yearly value of £10. And by 6 George IV. c. 57, it seems this mode of obtaining a settlement is no longer in force; as, by its provisions, the rental of a tenement of £10 per annum, and the actual payment of rent for a year, confers a settlement, without reference to any payment of taxes (except the payment of a year's poor rate, as required by the New Poor-Law Bill.)

Settlement by serving in office is regulated by 3 and 4 William and Mary, c. 11, which enacts, that if any person

* The tenement in land, however, need not be entire to confer a settlement. It may consist of various parcels, situate in different parishes, and taken at different times, be held of different landlords, or by distinct titles, so that a rental of £10 be in any one parish; nor is residence on the tenement absolutely necessary, provided the party has resided forty days in the same parish &c. during the year, no matter in what capacity.

inhabiting a parish, &c., shall, for himself, and on his own account, perform the duties of any *public annual office*, or charge, in the said town or parish, for one whole year, he shall obtain a legal settlement. This is not merely understood of a *parish office*, but any public annual office served in the parish, is sufficient; such as warden of a borough, parish clerk, whether chosen by the parishioners or the rector; sexton or clerk; collector of the land tax, or of duties on births and burials; the office of tything-man, or constable of a city, whether the parishioners elect or not; petty constable, if sworn at the leet, though serving by deputy, or special constable, under 1 and 2 William IV. c. 12; the office of bailiff or ale-conner, borsholder or hayward; or assistant overseer, at an annual salary of £10. The party, however, must be regularly and legally appointed to such offices, or the mere serving of them will not gain a settlement; and the office must be completely served for the year.

The *certificate of settlement* is a document given by the parish authorities, to shew that the party described in it has a legal settlement in the parish, &c., mentioned in it. It was originally introduced to mitigate the severity of 13 and 14 Charles II., empowering two magistrates to remove to their last settlement persons who were *likely to become chargeable* in parishes where they may have wandered in search of employment. The 8th and 9th of William III. c. 30, is ordinarily called the *certificate act*, and provides, that if such persons, on their arrival in any parish, deliver to the churchwardens, &c., a certificate under the hands and seals of the churchwardens, &c., of any other parish, attested by two witnesses, acknowledging the person named in the certificate as an inhabitant legally settled in such latter parish, such certificate being allowed and subscribed by two justices of the district, shall oblige the parish giving such certificate to provide for such persons whenever they become chargeable, or ask relief of the parish to which the certificate was given; and the persons so chargeable may *then* be removed to the place from which the certificate was brought. But, by 3 George II. c. 29, one or both of the witnesses to the certificate must make oath before the justices that the witnesses saw the churchwardens, &c., severally sign and seal the certificate, and that the signature is in the proper hand-writing of the witness, which the justices must also certify. The following is the form of the certificate:—

"To the churchwardens and overseers of the poor of the parish of in the county of to wit.

"We, the present churchwardens and overseers of the poor of the parish of in the county of do, on behalf of ourselves, and the inhabitants of the said parish, certify to you, the churchwardens and overseers of the poor, and the rest of the inhabitants of the parish of in the county of that A. B. yeoman, is an inhabitant legally settled in our said parish of aforesaid; therefore, if he think it necessary to sojourn in your said parish of for the convenience of his business, and shall there become chargeable, we do hereby promise to receive him, his wife, and children, and provide for them as our poor, according to law, unless he or they shall obtain a legal settlement with you or elsewhere. In witness whereof we have set our hands and seals this day of in the year of our Lord 18

C. F. } *Churchwardens.* | H. I. } *Overseers.*
D. E. } | G. K. }

"Signed, sealed and delivered by the churchwardens and overseers of the poor of the parish of aforesaid, and in the presence of us, } M. N. L. O."

The statute 35 Geo. III. c. 101, has nearly destroyed the practice of granting such certificates, by enacting that no person shall be removable or be removed in any case, "*until he is actually chargeable.*" The former statutes, however, remain unrepealed, and so much notice of them may be occasionally found useful.

SETTLEMENT BY HIRING AND SERVICE.

Although no settlement can be obtained by hiring and service, in consequence of any hiring and service which was *not completed* on the 14th of August, 1834; yet many questions of settlements will have to be disposed of on the grounds of such hiring and service, which have been completed before that period by persons now living, and who may become chargeable to parishes, &c. It will therefore be necessary to give a summary abstract of the principles on which such claims of settlement have been hitherto decided; though it would be needless to enter into very minute details on the subject, as the number of

possible claimants will be diminishing every day, and in the course of some years will altogether cease to exist.

By 3 William and Mary, c. 11, the hiring and service for one *whole* year of any *unmarried* person, *without* children, is a good settlement; but no apprentice or hired servant of a person coming into a parish by certificate. gains a settlement by such service as apprentice or servant. Nor does the hiring and service for the preservation of the woods, game, &c., of Alice Holt Forest, in the county of Southampton, confer a settlement in the parish of Binstead. Nor does the servant or apprentice of a toll-collector obtain any settlement by his service.

The whole year's service need *not* be under the same *yearly* hiring, but it must be in the *same* service; nor is it necessary to be under the same master, if the service be continued and completed under the assignees, &c. The service *need* not be in the parish where the hiring took place, nor altogether in one parish, or where the master resides, as wherever the servant resides *the last forty days for the purposes of the service,* he acquires his settlement: nor is it required that such forty days should be *consecutive,* though they must be within the year; and if a servant serve in several parishes, his settlement will be where he has *last served,* if he has, during the service, resided and served there forty days within one year.

A *widower* is within the meaning of an *unmarried* person. If a man be single when the contract is made, marrying *between* the hiring and entering into the service does not defeat the settlement; neither does a marriage *during* service affect the settlement.

Having children emancipated, as in the case of being married and settled elsewhere, enables the parties so situated to come within the meaning of the act as "*not having child or children,*" as such children cannot become chargeable in consequence of the hiring, &c.; but where the emancipation of the children is not complete at the *time* of the hiring, the contract does not confer a settlement.

A hiring during an *existing* apprenticeship is not sufficient.

A *deserter* can gain *no* settlement by hiring and service; *nor* a private soldier, although he may serve by permission of his officer; nor can a person in the militia lawfully hire himself for a year so as to entitle him to settlement, unless he state the fact to his employer.

An infant may contract to hire and serve for his own benefit, so as to gain a settlement; and this he may do

also with his own parents or relations; but the employer must not be a *certificate man*, or the widow of one.

The master need not have a settlement himself in the parish, nor is the master's residence in the parish material. And the hiring may be by the officer of a public establishment, and by persons not rated to the poor.

An *unemancipated* son gains a settlement by a *bonâ fide* contract, and hiring, and service for a year, with his father, although his father has no settlement in the parish.

The hiring, &c., must, however, be the act of the party *himself:* for a person hired out by parish officers gains no settlement by such hiring; nor any settlement by any *compulsory* hiring or service. But where a poor boy *hired himself*, and the overseers afterwards furnished him with clothes, it was held that he had acted in his own right, and gained a settlement.

There must be an *actual contract* where the servant is under an obligation to stay, and it must be *mutual* to bind both parties:—thus a young girl who lived *four* years with a relation, for which she was to have "meat, drink, washing, and lodging," was held to be under *no contract;* and a boy who lived several years with an uncle, working at his trade, for board, clothes, &c., without contract, was held *not* to have gained a settlement.

No hiring can be presumed without a contract;* but if a contract appear, it will be presumed to be regular, till the contrary is proved.

An assistant to a waiter at an inn does not obtain a settlement, without an agreement with the innkeeper himself;—and if a person live with a relative, *as such*, and not under any hiring, and afterwards go there to live "*as before*," no settlement is gained. But where a person lived with another as ostler for two years, and was seen in such service there; and where a person was seen and known in the service of another in husbandry for a year, a yearly hiring was *presumed*. And where a person goes into service upon liking, and at the end of the year is paid *by the year*, and continues after in the service, a yearly hiring is *presumed;* as it may also be presumed from a continued service of four years. And if a person, hired at first for less than a year, serve for a space of three years, a yearly contract may be inferred.

A hiring in husbandry for meat, drink, washing, and clothes when wanted, under which two years' service is

* In a contract by *deed*, it is not necessary that it should be executed by the master as well as the servant.

performed, though no time be agreed upon, is held to be a general hiring for a year; and telling a person to go into the place of another, who *has been* a yearly servant, is also held to imply hiring for a year;—as also where no mention is made of time or wages, and the service is actually for a year. An indefinite hiring is also considered a hiring for a year. But where a person went to service for meat and clothes, "*as long as he had a mind to stop*, to do what he could, and what he was bid," this was held *not* to confer a settlement, although the party remained two years in such service; on the principle that a hiring which either a master or servant may determine when either pleases, is not a general hiring for a year. But hiring for *eleven* months, and then "*on an end*," confers a settlement as an *indefinite* hiring.

What constitutes *hiring for a year* is sufficiently understood to be a hiring for a complete year of three hundred and sixty-five days; or from one quarter-day to the same quarter-day in the following year; but in the struggles between contending parishes, much quibbling has been resorted to, which has produced the following decisions:

Hiring from Whitsuntide to Whitsuntide confers a settlement, although there may not be three hundred and sixty-five days in that period: and on the contrary, a settlement is gained under such hiring, although the service ends before the following Whitsunday, if the service actually continued more than three hundred and sixty-five days.

Hiring *two* days after Michaelmas to the following Michaelmas, does not gain a settlement; but hiring the day after Michaelmas-day, at a statute fair always held on that day, to the following Michaelmas, was held by the custom to confer a settlement. And a person hired indefinitely entering into his service the day before New-Year's day, and quitting two days after the following Christmas, being paid his full wages, gained a settlement, it being the *usual* time when servants go into, and leave their places.

With respect to what is *not hiring* for *a year*, it has been decided that a person hired for three years at £20 per year, as a superintendant of flocks and fences, did *not* gain a settlement, because when hired he was told by his master that he should not have *full* employment for him, but would employ him as much as he could, and he was not to do any other work than what belonged to his office of looker, without extra wages.

A hiring for *two half years* in succession, though according to local custom, will not make a yearly hiring; nor hiring at a *statute* fair for *less* than a year, though it may be customary. And hiring for *less* than a year, to avoid a settlement, although the whole year's wages be paid, is *not* a yearly hiring.

Hiring for *fifty-two* weeks is not a hiring for a year, as there are but *three hundred and sixty-four days* in fifty-two weeks; while the year contains *three hundred and sixty-five days, six hours, and forty-nine minutes.* And hiring *three days* after Michaelmas, till the following Michaelmas in *leap year*, will not gain a settlement, although the service consist of *three hundred and sixty-five days*, the *year* in *leap year*, consisting of *three hundred and sixty-six days.*

A hiring at so much *per week* is *not* a general hiring, though the service may continue or exceed a year; and where nothing is said as to the term, a weekly payment constitutes only a weekly hiring; but hiring at three shillings per week, *all the year round*, each to be at liberty on a fortnight's notice, is a settlement on service for a year.

A hiring by the month, at a month's wages or a month's warning, is not a yearly hiring; but hiring at so much per week, and a month's notice, has been held to be a general and not a monthly hiring.

Hiring *by the year* to spin yarn, at so much per stone, or to make screws at so much per gross, will gain a settlement; but merely to do a *limited* quantity of work, as to make a certain quantity of bricks, &c., gives no settlement:—and the contract for a year must not embrace any time past.

Settlement *may* be obtained by *conditional hiring;* that is, where the contract to serve is for the entire year, although some provisions is introduced, that on a given event, either party may *suspend* or *put an end* to the service; when, if neither party avail himself of the condition, the contract is absolute, and the settlement gained.

But no settlement can be gained by *exceptive hiring,* where the relation of master and servant *cannot* exist *through the year,* unless some further arrangement should be entered into.

Hiring with *limitation* of *working hours,* exception of Sundays, &c., will not be a yearly hiring; but exceptions implied by the customs of the country, will not defeat a settlement; so a mercantile clerk, hired by the year,

and serving only the *usual* hours of business, gained a settlement, though never occupied the whole of the day.

An agreement in writing to teach a trade, where the person is *not* described as an apprentice, and a binding by verbal agreement to serve another, on condition of being taught a trade, is a general hiring for service.

A *service* for a year, though under *different* hirings, is good, if one of the hirings be for a year; thus, a hiring and service for *less* than a year, and then hiring *for a year*, with only ten days' service under the yearly hiring, if a *whole* year's service be completed under both, will gain a settlement.

If a master receive a servant, after being absent without leave, the service is not interrupted; a servant while ill continuing in the service of the master, although unable to perform the service required; and, generally speaking, any consent of the master to forego any portion of the service, paying the wages for the year, is a dispensation on his part, which will not defeat the settlement; neither will a commitment to the House of Correction, if the party be imprisoned at the instance of the master; or if the master receive him back into service after being so imprisoned, at the instance of any other persons.

But if a master and servant part three weeks before the year expires, by mutual consent, and the servant deduct part of his wages, it is a *dissolution* of the contract, and no settlement is gained. The rule with reference to the fact of dissolution being, whether the master has the power afterwards of *compelling* the *continuance* of the service;—if he have not, there is *an end* of the contract;—but if he *have* such power, and choose to dispense with it, it is then* only a dispensation, and the servant is entitled to the benefit of the service. A female servant, if discharged by her employer for being pregnant, will thereby lose her settlement; and a servant detained some days from his service, when apprehended on a charge of bastardy, was held also to forfeit his settlement on that account.

* But if a master, at the servant's request, give him leave to go to *another* service before the end of the year, though he pay him the full wages, it is held to be a dissolution of the contract.

SETTLEMENT BY APPRENTICESHIP.

No settlement can in future be obtained by any service of *apprenticeship* whatever, which has not been completed before August 14, 1834. But, as in the case of settlements by *hiring* and *service*, claims will be preferred for some following years, which render it useful to insert the principles on which the laws previously existing require them to be decided.

Nothing more is required by 13 & 14 Charles II. c. 12, to entitle an apprentice, who is *duly bound* to a parochial settlement, than a residence of *forty days* in any parish, under the same principles as regulate the settlements under hiring and service; and 3 William & Mary, c. 11, enacts, "that if any person shall be bound an apprentice by indenture, and inhabit any town or parish, *such binding* and *inhabitation* shall be adjudged *a good* settlement;"—except such persons should be bound apprentice to some one who came into such parish by certificate, in which case no settlement is gained by the apprenticeship. The binding must be by *deed;* but the relation of apprentice may be created as freely as that between master and servant; though parents, &c. may covenant as parties for the good conduct, &c. of apprentices, and parish officers have certain duties with respect to parish apprentices, which will be found stated elsewhere. Infants may bind themselves, and may be bound by others at any age, adapted to the nature of the occupation; except to chimney-sweepers, to which they cannot be apprenticed under eight years of age, so as to obtain a settlement. An infant may also be bound to a master who is not of age; and the master's condition is immaterial. Even where a parish indenture was duly executed and allowed, the settlement was admitted to be gained, although the master fraudulently imposed upon the justices.

An apprentice may be bound to two masters in succession, and to learn two different trades, and for such an indenture one stamp will be sufficient; but the apprentice must be in all cases a party to the deed, although an infant; and if the binding be the act of other parties, without his own intervention, no settlement is gained; and of course, if the party be an adult, he must be a party to the deed, or his *assent* will go for nothing. But in the case of a parish apprentice there is a special power given, by the statute of Elizabeth, to parish officers, by which

an apprentice may be bound *without* his consent, till he come of age.

Binding for a less term than seven years does not render an indenture void, and a service for any term will gain a settlement; even binding for an unlimited period does not make void the indenture.

Where *premiums* are paid, care must be taken they are inserted in the indenture, and that the indenture bears the *proper stamp*, as where the proper duty is not paid, the indenture is void, and the settlement forfeited. But the premium given by parish officers, or any public charity, need not be inserted, the indentures being exempt from duty. In the contract of apprenticeship, the apprentice must contract to work, as well as the master to teach, or no settlement can be obtained under the indenture.

An apprentice who has to serve his master in several parishes or places, may be a sufficient time in each to establish a settlement in each, one after another; but the right is ultimately fixed in the place where he has *last completed* a residence of forty days or more, under the indenture, and he may obtain such settlement, although his master had none in such place. An apprentice working by day in one parish, and sleeping by night in another, obtains a settlement where he sleeps. And if an apprentice to a ship-owner resides in a port more than forty days in the course of his trade, he gains a settlement there, though the master, in the mean time, may abscond from home.

And an apprentice may gain a settlement under the indenture, although the master relinquishes his right for a time, to be resumed at a future day, or permanently, for the remainder of the period; but the transfer of service must be with the *express consent* of the previous master. Giving a character with an apprentice is a constructive assent to service with the party applying for it; and the consent of the widow of a master is sufficient, without administration. And if an apprentice continue under an indenture by leave of an executor, he will gain his settlement. And a transfer to a third from a second master, either verbally, or by assignment, is equally valid.

When a master and apprentice intend to sever the connexion, and the intention is even followed by an actual separation, the indenture will remain in force, as far as the settlement is concerned, unless it be formally cancelled, or otherwise legally determined.

A parish apprentice cannot *consent* to his discharge

until he is of full age; but, after that period, his own consent, with that of his master, is sufficient to cancel the indentures, without the consent of the parish officers.

An apprentice bound with his father's consent may be discharged, although under age, by consent of all the parties; and an *exchange* of indentures between master and apprentice amounts to a cancelling of them.

PARISH APPRENTICES.

Churchwardens and overseers, with the consent of the parents,* may bind out poor children to such persons as they may think proper; if males, until the age of twenty-one; if females, until that age, or marriage. No such child to be bound out of the county more than *forty miles*† from the parish to which it belongs, unless the child belong to a parish more than forty miles from London. This power is vested solely in the churchwardens and overseers, even where guardians are appointed; and the indentures need not be signed by the guardian. And where two persons, or one, in small parishes, discharge the duties of churchwardens and overseers, the indentures signed by such persons are valid. Indentures are also valid if executed by the church or chapelwarden of a township, hamlet, or chapelry, provided the person be sworn church or chapelwarden of the *parish* in which the township &c. is situated, or of such township, &c. And an indenture is good if executed by the overseer of a township, and the churchwardens *acting for* the township, though the churchwardens of the parish in which the township is situate do not join in the execution. And parish indentures are good if signed by one church or chapelwarden, in any township, &c. in England, even where two or more have been usually appointed.

But before any child is bound apprentice, it must be taken before two justices of the peace for the district, who are to inquire into the propriety of binding such child to the person proposed; and particularly whether such person resides, or has his place of business within a reasonable distance; and if they think fit, examine the father and

* By 43 Eliz. if the parents refuse their consent, being unable to maintain them, the churchwardens, &c., may bind such poor children apprentices with the consent of two justices of the peace; but this is seldom done, nor perhaps is it very advisable.

† Except the justices make a special order, for specified reasons, for binding to masters at a greater distance.

mother of such child, if residing in or near the place to which it belongs; and if the justices think it proper the child should be bound, they will order it to be done, which order will be the warrant of the overseer to bind such child accordingly; and the justices are to sign their allowance of the indenture before its execution by any of the other parties.—Overseers, &c. binding without such order, &c. forfeit the sum of £10 for each apprentice so bound. And if a master or mistress remove out of the county, or beyond forty miles from the place of binding, they must give fourteen days' notice previous to such removal, when the parish officers shall take the apprentice before two justices, who shall inquire into the propriety of the apprentice continuing, or being assigned, or discharged, and order as they think fit. And if any master, &c. remove without such order, or abandon an apprentice, he shall forfeit £10 to the use of the poor, on information exhibited within three months after the offence, 56 Geo. III. c. 139.

And by 9 & 10 Wm. III. c. 30, persons appointed to receive such apprentices by the overseers, and refusing to take them, or provide for them when bound, are liable to the penalty of £10, to be levied on default by distress and sale.*

Parish officers shall not bind out any child as a parish apprentice before the age of nine years; nor to the *sea service* until the age of ten years.

Overseers, &c. are to keep a book, with the name of every child bound apprentice, and the several other particulars required, according to the following form :—

* The statute 1 James 1, c. 3, referring to monies charitably left for binding out apprentices a number of poor children to needful trades, after enacting that such monies should be continually employed for such purpose, directs the clergy and parochial officers for the time being, to see the directions of the respective donors as to numbers, &c. to be complied with, under a penalty of ten marks, or 3*l.* 6*s.* 8*d.* Masters, &c. receiving any portion of these funds are to give security for its repayment at the end of seven years, or within three months after; or if the apprentice die, within one year after his death; or within one year of the death of the master, &c. in such an event. The money is to be employed within *three months* after it reaches the hands of the trustees; and if a sufficient number of proper objects cannot be found within the places named, they may be selected from any adjoining parish. The trustees are, in every Easter week, or in one month after Easter day, to make a fair account of all accounts, bindings, &c. to two or more justices; and within ten days after deliver up the monies, bonds, &c. to their successors. And on any breach of trust, or offence, the Lord Chancellor, on the petition of any person may levy the money misemployed either on the defaulters, or on *such able inhabitants* as he may think fit; and all persons feeling themselves aggrieved may appeal to the Lord Chancellor.

No.	Date of Indenture.	Name of the Apprentice.	Sex.	Age.	His or her parents' names.	Their residence.	Name of person to whom bound or assigned, *(as the case may be.)*	His or her trade.	His or her residence.	Term of the apprenticeship or assignment.	Apprentice or assignment fee.	Overseers parties to the Indenture or assignment.	Magistrates assenting	Magistrates resident in any other county within which the place shall be situated where the child is to serve, 56 Geo. III. c 39.
													(To be signed by themselves)	*(To be signed by themselves.)*

Every such entry in this book must be signed by the magistrates who gave their assent to the binding; and any person may inspect such book at reasonable hours, and take copies of the entries on the payment of *sixpence*.

Overseers refusing or neglecting to provide such book, or to make the proper entries, or altering or obliterating such entries, or making false entries, or refusing to produce such book to the magistrates, or not delivering the same to their successors, within fourteen days after their appointment, incur a penalty of £5 for every offence, to be recovered on default of payment by distress, &c., or failing such distress, the offender may be committed for one month, unless the forfeiture be sooner paid.

Where the master, &c. of a parish apprentice, or his executors, &c., having assets, refuse to maintain such apprentice according to the terms of the indenture, the parish officers may on complaint obtain the warrant of two justices to levy by distress such sum as shall be necessary for clothing and maintaining such apprentice. And where parish apprentices are discharged for *ill usage*, the officers may be bound in recognizances to prosecute the master; and the magistrates may order the expenses to be paid half out of the county rate, and half out of the poor rate; and if the parish officers refuse to pay such expenses, they may be levied by distress. And the parish officers shall not place out any other child as apprentice to any one convicted of ill treating an apprentice, 32 George III. c. 57.

Churchwardens and overseers, with the consent of two justices, may bind boys of *nine* years old, or upwards, who are chargeable, or whose parents are chargeable, or who beg, or with the consent of the parents in other cases, to a chimney-sweeper, until the age of sixteen, 56 George III. c. 139. And may bind any boy of ten years old, or more, under the same circumstances, to the sea service, until the age of twenty-one; paying to the master at the time of binding fifty shillings for clothes and bedding, and sending the indentures with the apprentice to the port to which the master belongs, the expense to be defrayed out of the county rate; but masters of ships are not compellable to take apprentices under the age of thirteen years, and who are not duly qualified by health and strength for the service.

When apprentices are to be bound to persons living *out of the parish* to which they belong, the following notice must be given by the parish binding to the officers of the parish in which the apprentice is to serve.

"*To the overseers of the poor of the parish of in the county of*

"Take notice, that we, whose names are hereunto subscribed, being churchwardens and overseers of the poor of the parish of in the said county, do intend to bind C. D. a poor child belonging to our said parish of to F. E. of in your said parish of and that application will be made on next, at o'clock, to such two of his Majesty's justices of the peace for the said county as shall then be sitting at for an order for the binding of such child to the said F. E., and for their allowance of the indenture of apprenticeship.

G. K. } *Churchwardens.* | M. N. } *Overseers*
H. I. } | L. O. }

REMOVAL OF THE POOR.

When a person becomes chargeable to any parish, &c., the parish officers, after granting what relief may be necessary, are to take the party before *two* magistrates for examination as to his legal settlement. If the party refuse to appear, he may be summoned; and if the summons be neglected, or the party cannot be examined on account of tender age, or insanity, the magistrate may grant a warrant for the apprehension, and grant the order of removal on other evidence. Where paupers are not able to attend the magistrates, one justice may take the examination, and report it to the petty sessions, who may adjudge the settlement, and make, and suspend the order of removal till it may be executed without danger. The expenses incurred during the suspension are to be paid, as allowed and ordered by the justices, by the parish to which the party belongs; but if they amount to more than £20, an appeal lies to the quarter sessions against the order of the justices.

By the New Poor-Law Bill, s. 79, (*see* p. 1008), no person can be removed till after twenty-one days' notice of his being chargeable has been sent to the parish to which the order of removal is directed; when the party may be removed, if the order be submitted to without dispute, but not in case of an appeal against it, until such appeal is heard and determined.

The churchwardens may employ any proper person to remove paupers to their parishes; and the officers of such parishes must receive them under such orders of removal, on penalty of forfeiting £5 to the use of the poor for each

offence, to be levied on default by distress and sale; and failing such distress, the offenders may be committed for *forty days*, and are besides liable to be indicted for the contempt of such order. The charges of removal, ascertained and allowed by one or more justices, to be defrayed by the parish to which the pauper belongs; and if not paid within three days after demand, unless notice of appeal be given, a magistrate on complaint may order the money to be levied by distress, with costs not exceeding 40*s.*; and if the parish be out of the jurisdiction of the magistrates issuing the warrant, it may be sent to any magistrate having jurisdiction, who must indorse it for execution. 33 George III. c. 54.

SCOTCH AND IRISH PAUPERS,

Although not having acquired any settlement in England, were not removable from any parish before the passing of 59 George III. c. 12, unless they had committed an act of vagrancy, and undergone the punishment of imprisonment or correction. But by that statute, two justices are required, on the complaint of the churchwardens &c., that any person born in *Scotland*, *Ireland*, or the *Isle of Man*, or his family, has become chargeable, to summon and examine such person or other witnesses, as to the place of his birth or last legal settlement, and to inquire whether he, or his children, have gained any settlement in England; and if not, to pass such person, &c. to the place of his birth or last legal settlement, as directed by the vagrant act for the removal of persons to *Scotland*, *Ireland*, and the *Isle of Man;* and constables, &c. and masters of vessels are required to convey such persons as by the said act is directed. Persons also born in the island of *Guernsey* and *Jersey*, so chargeable, may be removed in like manner, by 11 George IV. c. 5. But where a person born in Scotland, &c. as before-mentioned, is dead, absent, or has deserted his family, it has been decided that the family cannot be removed to his place of birth, but must go to the wife's maiden settlement; yet in the event of his return after any absence, they may be removed with him.

AN APPEAL

Lies against any order of removal to the next general quarter sessions, after such order is made, if there be time to give the requisite notices, and if not, to the next follow-

ing quarter sessions The appeal may be either on the ground of informality, want of jurisdiction in the magistrates, or that the pauper is not legally entitled to a settlement in the parish of the appellants; but whatever the grounds of appeal may be, they must be set out circumstantially in the notice* of appeal, of which the following is a general form:—

" *To the churchwardens and overseers* of the poor of the parish of in the county of

" This is to give you and every of you notice, that we the churchwardens and overseers of the poor of the parish of in the county of do intend at the next general quarter sessions of the peace in and for the said county of to be holden at to commence and prosecute an appeal against a certain order of A. B. and C. D. esquires, two of his Majesty's justices of the peace in and for the said county of for and concerning the removal of E. F. and H. his wife, and their two children K., aged years, and L., aged years, to our parish of as aforesaid; the said E. F. and H. his wife, and K. and L. his said children, not having any legal settlement in the said parish.

[" And we hereby further give you notice to produce at the hearing of the said appeal, at the time and place aforesaid, all and every the rate book or books belonging to the said parish of wherein are entered and kept the rates paid or payable for the year 18 up to and including the year 18 and all other papers and writings relating to or concerning the rates of the said parish, during the above years or any of them.]

[" And we hereby further give you notice, that at the aforesaid general quarter sessions of the peace, the court will be moved that the benefit of the said appeal shall be saved, and that the hearing and determining thereof be adjourned until the next general quarter sessions of the peace to be held in and for the said county.]

" Witness our hands this day of in the year of our Lord, 18

A. B., C. D. } *Churchwardens.* | C. D., E. F. } *Overseers.*"

* The right of appeal is not merely vested in the parish, but any parishioner may appeal if he thinks proper; and even the pauper himself, if he feel aggrieved by any order of removal, has the right of appeal against it.

The latter paragraphs, marked [ ], will of course be omitted when the books, &c. are *not* required, or if it be *not* intended to move for any postponement of the hearing.

The notice so signed by the officers, or their attorney, should be delivered to the officers of the respondent parish as soon as possible after the order of removal, and a reasonable time (generally eight days) before the sessions commence; but to avoid any consequences, from not being ready to appeal in time, the court may be moved to allow the appeal to be lodged, and the hearing respited to the following session. For other particulars on such appeals, see new poor-law, sections 79, 80, 81, 82, 83, & 84, p. 1008.

If a pauper so removed return to the parish from which he was removed *in a state of vagrancy*, he may, on complaint and proof of the facts upon oath, be committed as a vagrant to the house of correction.

Where the relations of paupers have the means, the statute of Eliz. 43, provides that the father and grandfather, the mother and grandmother, and the children of every poor, old, blind, lame, and impotent person, and other person not able to work, shall relieve every such poor person according to such rate as two or more justices (by 59 Geo. III. c. 12) shall assess, on the penalty of forfeiting *twenty shillings per month*, to be levied by distress. It will be seen, however, by the new poor law, s. 57, that, although it leaves *parents* and *grandparents* liable to the support of their children, it does not add that children are liable to support their parents. The provision of Elizabeth is not, however, specifically repealed; and it is probable the Court of King's Bench might decide that it is still in force. The following is a copy of the summons requisite to enforce the claim:—

"To Mr. A. B. of in the county of

"Take notice, that the churchwardens and overseers of the poor of the parish of , in the county of , intend to make application to such two or more of his Majesty's justices of the peace as shall be sitting in petty session on the day of next, at in the said county, for an order on you to pay such weekly sum for and towards the relief of C. D., your (*as the case may be*), who is now unable to work, and has become chargeable to the said parish, as the justices shall think fit.

"Dated this day of 18 ."

(*Signed*)

Chelsea, Greenwich, Royal Marine, and *Ordnance* pensioners, in want of parochial relief, may assign the follow-

ing quarterly payment to the churchwardens and overseers, out of which they may retain so much as they have advanced on the part of the parish. The assignment is in the following form:—

"I, A. B. do hereby assign to the churchwardens and overseers of the poor of the parish of the next payment of the pension at the rate of per day, granted to me as , and payable from , in order to secure the said parish of the repayment of the sum of advanced to me, [*or*, of the weekly sum of agreed to be advanced to me] by such churchwardens and overseers.

(*Signed*) A. B."

This assignment, attested by one justice, is to be transmitted by the parish officers *one month* previous to the quarterly days of payment, which are the 25th of March, June, September, and December, under cover to the proper paymaster; indorsed, *Chelsea*, *Greenwich*, *Royal Marines*, or *Ordnance Pensioner*, as the case may be. The assignment must also be accompanied by the following certificate:

"We, the undersigned, being two of the churchwardens and overseers of the poor of the parish of , in the county of , do hereby certify that A. B., an out-pensioner of , from the regiment of , at *per diem*, is now alive, and residing at .

"Dated this day of 18 .

"(Signed) C. D. *Churchwarden*.
E. F. *Overseer*."

Any dispute between the pensioner and the parish officers, is to be settled by one justice in a summary way. Assignments become void if the pensioner die before the pension is due. And where any pensioner leaves or suffers his family to be chargeable to the parish, two justices, on complaint of the parish officers on oath, may direct the next payment to be applied in discharge of any monies expended in support of the pensioner's family, paying to such pensioner any surplus that may remain. (59 Geo. III. c. 12.)

If the *wives* and *families* of *seamen* employed in the *merchant service* become chargeable to the parish during the absence of their husbands and fathers, two justices, on complaint, &c. may order the acting owner, or any responsible agent of the vessel, to pay the parish officers so much as shall have been necessarily expended for their relief, such amount may be recovered as poor rates; but

no owner, &c. is compelled to pay any wages until the voyage is completed.

Where husbands or parents leave their wives and children chargeable, the parish officers may obtain an order from two justices, to take sufficient of the goods or chattels, or profits of lands, &c. to maintain such families; and may dispose of such profits or effects, on a confirmation of the order at the following quarter sessions, accounting for such disposition to the sessions. And such parties so leaving their families, if apprehended, may be compelled to give security not to repeat the offence; or, failing to obtain such security, they may be committed to prison, and, on offending a second time, may be dealt with as incorrigible rogues, and committed to hard labour for any period not exceeding three months.

Pauper and criminal *lunatics* having sufficient estate to maintain their families, two magistrates may direct and authorize the churchwardens or overseers to take and sell so much of the goods and chattels, or to receive so much of the annual rent of lands, &c. as may be necessary to pay any reasonable charges that may be incurred, under any directions for removal, maintenance, clothing, medicine, care, &c., such money to be accounted for at the next quarter sessions.* (9 Geo. IV. c. 40.)

Persons, also, who are committed to gaol as *vagrants*, and have the means of conveying themselves thither, but refuse to bear such charges, the constable, by warrant of the magistrate, may sell so much of the goods, &c., of

* Justices in petty sessions may direct overseers, &c. to return lists, verified on oath, to the clerk of the peace, within fourteen days, of all chargeable insane persons, and how disposed of, accompanied with a medical certificate of the condition of each party. And any magistrate may order the overseers to bring any insane person before two justices, who may make an order for such person to be conveyed to the county or other asylum properly licensed, where the certificate of insanity must also be left. Where the lunatic has no property, the parish where he is found must meet the expenses, and be repaid by the parish in which he is settled. Visitors may fix a weekly rate, not exceeding fourteen shillings, for the maintenance of such persons in county asylums; and the justices in session may award a larger sum, if necessary; and where the settlement cannot be ascertained, the treasurer of the county must defray the expenses. The following is the usual form of the medical certificate:—

"I do hereby certify, that by the directions of A. B. and C. D., esquires, two of his Majesty's justices of the peace for the county of have personally examined E. F., and that the said E. F. appears to me to be of insane mind. Dated this day of 18

(Signed) G. H., Surgeon, *(or as the case may be.)*
Resident at

the party as will suffice, on appraisement by four inhabitants of the parish or place where the goods are found. Where there are no effects, the officer will be repaid by the treasurer of the county any sum allowed, upon oath, by a justice of the peace.

Where poor persons are *confined* (except in a county gaol) under mesne process for *debt*, and are not entitled to any allowance for subsistence, a magistrate may order the overseers to afford relief at not exceeding the rate of *sixpence* per day, provided they have made previous application to the overseers for relief. If the debtor is not settled in the parish where he is confined, the magistrate will make an order of removal, and suspend it during such confinement. A copy of this order is then to be served upon the parish officers of the true settlement, and if they refuse or neglect to repay any such advances to the debtor, within twenty-one days after demand, a distress may be issued; but if the charges and costs exceed £5, the parties may appeal, on giving twenty-one days' notice. Such allowances made to debtors who have no settlement in England or Wales, are to be repaid out of the county rates. The 52 Geo. III. c. 160, and 55 Geo. III. c. 21, authorizes the commissioners of customs or excise to cause an allowance of not more than 7½*d*., nor less than 4½*d*. per day to any person confined under exchequer process.

The families or servants of persons confined in the King's Bench, or living in the rules, or confined in the Marshalsea, becoming in any way chargeable to the parish of St. George the Martyr, such charges, &c. examined and signed by a magistrate acting for the eastern half hundred of Brixton and borough of Southwark, are to be repaid by the parishes to which such persons belong. And the families of prisoners confined in the county gaol, or house of correction, becoming chargeable to the said parish, the expenses are to be repaid by the treasurer of the county of Surrey. (23 Geo. III. c. 23.)

Prisoners discharged from any county gaol, or other prison, on the production of a certificate-pass from a visiting justice, are entitled to relief from the overseer of any place on their route, at the rate per mile specified in such pass, to the next place on the road; the overseer indorsing the sum paid on the back of the pass, and taking a receipt for the money, which is to be repaid by the county treasurer; the last overseer on the route being required to take the pass, and return it to the keeper of the prison, with the words "*pass of a discharged prisoner*," on the cover. (5 Geo. IV. c. 83.)

POWERS, &c. OF OVERSEERS.

Where there are no churchwardens, the overseers are authorized to execute all matters relating to the poor, as are generally performed by the churchwardens and overseers.

By 1 & 2 Wm. IV. c. 37, when any workman, &c. employed in manufacturing iron or steel; or working mines of coal, iron-stone, lime-stone, or salt-rock; or working stone, slate, or clay; or preparing salt, bricks, tiles, or quarries; or manufacturing nails, chains, rivets, anvils, vices, spades, shovels, screws, keys, locks, bolts, hinges, or any other article made of iron, or steel, or any plated articles of cutlery; or goods of brass, tin, lead, pewter or other metal, or japanned goods or wares; or in making or any way preparing woollen, worsted, yarn, stuff, kersey, linen, fustian, cloth, serges, cotton, leather, fur, hemp, flax, mohair, or silk manufactures, mixed or not mixed with one another; or in making or preparing glass, porcelain, China, or earthen ware, or any materials used in such last mentioned trades; or making or preparing bone, thread, silk, cotton, or other lace; if his wife or widow, or children under age, become chargeable to any parish or place, and if within the space of *three calendar months* next before the term when he or they so become chargeable, such artificer, &c. shall have earned or become entitled to any wages for any labour done by him in the said trades, which wages shall not have been paid him in the *current coin of the realm*, the *overseers* of the poor of the parish may recover the same from the employer in the same manner as by law is provided for the recovery of servants' wages, or by any other lawful means; and the amount of the wages so recovered shall be applied to reimburse the parish for the costs, &c. incurred by such person becoming chargeable, the surplus to be paid over to such artificer, &c.

"No action shall be brought against any parochial officer, or any person acting under his authority, for any thing done under a warrant, under the hand and seal of any justice, until demand made and left at the usual place of the abode of such officer, signed by the party demanding a perusal and copy of the warrant, and that the same has been *refused* for *six days*; and after complying with such demand, if any action be brought without making the justice who signed it defendant, or producing or proving the warrant at the trial, the jury shall find for the de-

fendant. And no such action shall be brought, unless commenced within six calendar months after the act committed."—24 Geo. II. c. 44.

And if any action shall be brought against any churchwarden or overseer, or any other person aiding and assisting him, for any thing touching his office, he may plead the general issue, of not guilty; and, on a verdict in his favour, or a nonsuit of the plaintiff, he will be entitled to double costs.

And when any distress is made for a poor rate, it shall not be unlawful for any defect in the appointment of overseers, rate of assessment, or in the warrant of distress; nor the party distraining be deemed a trespasser *ab initio*: but the parties injured may have their action, and full costs if they recover, unless tender of amends has been made.

DUTIES OF OVERSEERS, &C. WITH RESPECT TO THE REFORM BILL.

This important statute, of 2 & 3 Wm. IV. c. 45, requires so much of the active and intelligent co-operation of the parochial authorities, in the development of its machinery, that no apology will be requisite for placing an abstract of its provisions in this portion of our work. The preamble sets forth, that—

Whereas it is expedient to take effectual measures for correcting divers abuses that have long prevailed in the choice of members to serve in the Commons House of Parliament, to deprive many inconsiderable places of the right of returning members, to grant such privilege to large, populous, and wealthy towns, to increase the number of knights of the shire, to extend the elective franchise to many of his Majesty's subjects who have not heretofore enjoyed the same, and to diminish the expense of elections; be it therefore enacted, by the King's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that each of the boroughs enumerated in the schedule marked (A) to this act annexed, (that is to say), Old Sarum, Newtown, St. Michael's or Midshall, Gatton, Bramber, Bossiney, Dunwich, Ludgershall, St. Mawe's, Beeralston, West Looe, St. Germains, Newport, Blechingley, Aldborough, Camelford, Hindon, East Looe, Corfe Castle, Great Bedwin, Yarmouth, Queenborough, Castle Rising, East Grinstead, Higham Ferrers, Wen-

dover, Weobly, Winchelsea, Tregony, Haslemere, Saltash, Orford, Callington, Newton, Ilchester, Boroughbridge, Stockbridge, New Romney, Hedon, Plympton, Seaford, Heytesbury, Steyning, Whitchurch, Wotton Bassett, Downton, Fowey, Milborne Port, Aldeburgh, Minehead, Bishop's Castle, Okehampton, Appleby, Lostwithiel, Brackley, and Amersham, shall, from and after the end of this present parliament, cease to return any member or members to serve in parliament. s. 1.

And be it enacted, That each of the boroughs enumerated in the schedule marked (B) to this act annexed, (that is to say), Petersfield, Ashburton, Eye, Westbury, Wareham, Midhurst, Woodstock, Wilton, Malmesbury, Liskeard, Reigate, Hythe, Droitwich, Lyme Regis, Launceston, Shaftesbury, Thirsk, Christchurch, Horsham, Great Grimsby, Calne, Arundel, St. Ives, Rye, Clitheroe, Morpeth, Helston, North Allerton, Wallingford, and Dartmouth, shall from and after the end of this parliament, return one member and no more to serve in parliament. s. 2.

And be it enacted, That each of the places named in the schedule marked (C) to this act annexed, (that is to say,) Manchester, Birmingham, Leeds, Greenwich, Sheffield, Sunderland, Devonport, Wolverhampton, Tower Hamlets, Finsbury, Mary-le-bone, Lambeth, Bolton, Bradford, Blackburn, Brighton, Halifax, Macclesfield, Oldham, Stockport, Stoke-upon-Trent, and Stroud, shall for the purposes of this act be a borough, and shall as such borough include the place or places respectively which shall be comprehended within the boundaries of such borough, as such boundaries shall be settled and described by an act to be passed for that purpose in this present parliament, which act, when passed, shall be deemed and taken to be part of this act as fully and effectually as if the same were incorporated therewith; and that each of the said boroughs named in the said schedule (C) shall from and after the end of this present parliament, return two members to serve in parliament. s. 3.

And be it enacted, That each of the places named in the schedule (D) to this act annexed, (that is to say), Ashton-under-Lyne, Bury, Chatham, Cheltenham, Dudley, Frome, Gateshead, Huddersfield, Kidderminster, Kendal, Rochdale, Salford, South Shields, Tynemouth, Wakefield, Walsall, Warrington, Whitby, Whitehaven, and Merthyr Tydvil, shall for the purposes of this act be a borough, and shall as such borough include the place or places respectively which shall be comprehended within

the boundaries of such borough, as such boundaries shall be settled and described by an act to be passed for that purpose in this present parliament, which act, when passed, shall be deemed and taken to be part of this act, as fully and effectually as if the same were incorporated herewith; and that each of the said boroughs named in the said schedule (D) shall from and after the end of this present parliament return one member to serve in parliament. s. 4.

And be it enacted, That the borough of New Shoreham shall, for the purposes of this act, include the whole of the rape of Bramber in the county of Sussex, save and except such part of the said rape as shall be included in the borough of Horsham, by an act to be passed for that purpose in this present parliament; and that the borough of Cricklade shall, for the purposes of this act, include the hundreds and divisions of Highworth, Cricklade, Staple, Kingsbridge, and Malmesbury, in the county of Wilts, save and except such parts of the said hundred of Malmesbury as shall be included in the borough of Malmesbury, by an act to be passed for that purpose in this present parliament; and that the borough of Aylesbury shall for the purpose of this act include the three hundreds of Aylesbury, in the county of Buckingham; and that the borough of East Retford shall for the purposes of this act include the hundred of Bassetlaw, in the county of Nottingham, and all places locally situate within the outside boundary or limit of the hundred of Bassetlaw, or surrounded by such boundary and by any part of the county of Lincoln or county of York. s. 5.

Weymouth and Melcombe Regis to return two members only, &c. s. 6.

Boundaries of existing boroughs in England to be settled. s. 7.

Swansea, Loughor, Neath, Aberavon, and Kenfig, to form one borough, and electors thereof not to vote for a member for Cardiff. s. 10.

Provided always, that no person being of holy orders, nor any churchwarden or overseer of the poor within any such borough, shall be nominated or appointed as returning officer for the same; and that no person nominated as returning officer for any borough now sending or hereafter to send members to parliament, shall be appointed a churchwarden or overseer of the poor therein, during the time for which he shall be such returning officer: provided also, that no person qualified to be elected to serve as a member in parliament, shall be compellable to serve as

returning officer for any borough for which he shall have been nominated and appointed by the sheriff, as aforesaid, if within one week after he shall have received notice of his nomination and appointment as returning officer, he shall make oath of such qualification before any justice of the peace, and shall forthwith notify the same to the sheriff: provided also, that in case his Majesty shall be pleased to grant his royal charter of incorporation to any of the boroughs named in the schedules (C) and (D) which are not now incorporated, and shall by such charter give power to elect a mayor or other chief municipal officer for any such borough, then and in every such case such mayor or other chief municipal officer for the time being, shall be the only returning officer for such borough; and the provisions hereinbefore contained, with regard to the nomination and appointment of a returning officer for such borough, shall thenceforth cease and determine. s. 11.

Six knights of the shire for Yorkshire; two for each riding. s. 12.

Four knights of the shire for Lincolnshire; two for the parts of Lindsey, two for Kesteven and Holland. s. 13.

And be it enacted, That each of the counties enumerated in the schedule marked (F), to this act annexed, shall be divided into two divisions, which divisions shall be settled and described by an act to be passed for that purpose in this present parliament, which act, when passed, shall be deemed and taken to be part of this act as fully and effectually as if the same were incorporated herewith; and that in all future parliaments there shall be four knights of the shire, instead of two, to serve for each of the said counties, (that is to say) two knights of the shire for each division of the said counties; and that such knights shall be chosen in the same manner, and by the same classes and descriptions of voters, and in respect of the same several rights of voting, as if each of the said divisions were a separate county; and that the court for the election of knights of the shire for each division of the said counties shall be holden at the place to be named for that purpose in the act so to be passed as aforesaid, for settling and describing the divisions of the said counties. s. 14.

And be it enacted, That in all future parliaments there shall be three knights of the shire, instead of two, to serve for each of the counties enumerated in the schedule marked (F 2), to this act annexed; and two knights of the shire, instead of one, to serve for each of the counties of Carmarthen, Denbigh, and Glamorgan. s. 15.

Isle of Wight, severed from Hampshire, to return a member. s. 16.

And be it enacted, That for the purpose of electing a knight or knights of a shire, to serve in any future parliament, the East Riding of the county of York, the North Riding of the county of York, the parts of Lindsey in the county of Lincoln, and the several counties at large enumerated in the second column of the schedule marked (G), to this act annexed, shall respectively include the several cities and towns, and counties of the same, which are respectively mentioned in conjunction with such ridings, parts, and counties at large, and named in the first column of the said schedule (G). s. 17.

And be it enacted, That no person shall be entitled to vote in the election of a knight or knights of the shire, to serve in any future parliament, or in the election of a member or members to serve in any future parliament for any city or town, being a county of itself, in respect of any freehold lands or tenements whereof such person may be seized for his own life, or for the life of another, or for any lives whatsoever, except such person shall be in the actual and *bonâ fide* occupation of such lands or tenements, or except the same shall have come to such person by marriage, marriage settlement, devise, or promotion to any benefice or to any office, or except the same shall be of the clear yearly value of not less than ten pounds, above all rents and charges payable out of, or in respect of the same; any statute or usage to the contrary notwithstanding: Provided always, that nothing in this act contained shall prevent any person now seized for his own life, or for the life of another, or for any lives whatsoever, of any freehold lands or tenements in respect of which he now has, or but for the passing of this act might acquire, the right of voting in such respective elections, from retaining or acquiring, so long as he shall be seized of the same lands or tenements, such right of voting in respect thereof, if duly registered according to the respective provisions hereinafter contained. s. 18.

And be it enacted, That every male person of full age, and not subject to any legal incapacity, who shall be seized at law or in equity of any lands or tenements, of copyhold or any other tenure whatever, except freehold, for his own life, or for the life of another, or for any lives whatsoever, or for any larger estate, of the clear yearly value of not less than ten pounds over and above all rents and charges payable out of or in respect of the same, shall be entitled to vote in the election of a knight or knights of the shire, to serve in any future parliament for the county, or for the riding, parts, or divi-

sion of the county, in which such lands or tenements shall be respectively situate. s. 19.

And be it enacted, That every male person of full age, and not subject to any legal incapacity, who shall be entitled, either as lessee or assignee, to any lands or tenements, whether of freehold, or of any other tenure whatever, for the unexpired residue, whatever it may be, of any term originally created for a period of not less than sixty years (whether determinable on a life or lives, or not), of the clear yearly value of not less than ten pounds over and above all rents and charges payable out of or in respect of the same, or for the unexpired residue, whatever it may be, of any term originally created of not less than twenty years, (whether determinable on a life or lives, or not) of the clear yearly value of not less than fifty pounds over and above all rents and charges payable out of, or in respect of the same, or who shall occupy as tenant any lands or tenements for which he shall be *bonâ fide* liable to a yearly rent of not less than fifty pounds, shall be entitled to vote in the election of a knight or knights of the shire, to serve in any future parliament for the county, or for the riding, parts, or division of the county in which such lands or tenements shall be respectively situate: Provided always that no person being only a sub-lessee, or the assignee of any underlease, shall have a right to vote in such election in respect of any such term of sixty years or twenty years, as aforesaid, unless he be in the actual occupation of the premises. s. 20.

And be it declared and enacted, That no public or parliamentary tax, nor any church rate, county rate, or parochial rate, shall be deemed to be any charge payable out of or in respect of any lands or tenements within the meaning of this act. s. 21.

County voters need not be assessed to the land tax. s. 22.

And be it enacted, That no person shall be allowed to have any vote in the election of a knight or knights of the shire, for or by reason of any trust estate or mortgage, unless such trustee or mortgagee be in actual possession or receipt of the rents and profits of the same estate, but that the mortgagor or *cestui que* trust in possession, shall and may vote for the same estate, notwithstanding such mortgage or trust. s. 23.

No person to vote for a county in respect of any freehold house, &c. occupied by himself, which would confer a vote for a borough. s. 24.

And be it enacted, That notwithstanding any thing hereinbefore contained, no persons shall be entitled to vote in the

election of a knight or knights of the shire, to serve in any future parliament in respect of his estate or interest as a copyholder or customary tenant, or tenant in ancient demesne, holding by copy of court-roll, or as such lessee or assignee, or as such tenant and occupier as aforesaid, in any house, warehouse, counting-house, shop, or other building, or in any land occupied, together with a house, warehouse, counting-house, shop, or other building, being either separately or jointly with the land so occupied therewith, of such value as would, according to the provisions hereinafter contained, confer on him or any other person the right of voting for any city or borough, whether he or any other person shall or shall not have actually acquired the right to vote for such city or borough in respect thereof. s. 25.

And be it enacted, That no person shall be entitled to vote in the election of a knight or knights of the shire to serve in any future parliament, unless he shall have been duly registered according to the provisions hereinafter contained; and that no person shall be so registered in any year, in respect of his estate or interest in any lands or tenements, as a freeholder, copyholder, customary tenant, or tenant in ancient demesne, unless he be in actual possession thereof, or in the receipt of the rents and profits thereof for his own use, for six calendar months at least, next previous to the last day of July in such year, which said period of six calendar months shall be sufficient, any statute to the contrary notwithstanding; and that no person shall be so registered in any year, in respect of any lands or tenements held by him as such lessee or assignee, or as such occupier and tenant as aforesaid, unless he shall have been in the actual possession thereof, or in the receipt of the rents and profits thereof for his own use, as the case may require, for twelve calendar months next previous to the last day of July in such year: Provided always, that where any lands or tenements, which would otherwise entitle the owner, holder, or occupier thereof, to vote in any such election, shall come to any person, at any time within such respective periods of six or twelve calendar months, by descent, succession, marriage, marriage-settlement, devise, or promotion to any office, such person shall be entitled, in respect thereof, to have his name inserted as a voter in the election of a knight or knights of the shire, in the lists then next to be made by virtue of this act as hereinafter mentioned, and, upon his being duly registered according to the provisions hereinafter contained, to vote in such election. s. 26.

And be it enacted, That in every city or borough which shall return a member or members to serve in any future parliament, every male person of full age, and not subject to any legal incapacity, who shall occupy, within such city or borough, or within any place sharing in the election for such city or borough, as owner, or tenant, any house, warehouse, counting-house, shop, or other building, being either separately or jointly with any land within such city, borough, or place occupied therewith by him as owner, or occupied therewith by him as tenant under the same landlord, of the clear yearly value of not less than ten pounds, shall, if duly registered according to the provisions hereinafter contained, be entitled to vote in the election of a member or members to serve in any future parliament for such city or borough: provided always, that no such person shall be so registered in any year unless he shall have occupied such premises as aforesaid, for twelve calendar months next previous to the last day of July in such year, nor unless such person, where such premises are situate in any parish or township in which there shall be a rate for the relief of the poor, shall have been rated in respect of such premises to all rates for the relief of the poor in such parish or township, made during the time of such his occupation so required as aforesaid, nor unless such person shall have paid on or before the twentieth day of July in such year, all the poor's rates and assessed taxes which shall have become payable from him in respect of such premises previously to the sixth day of April then next preceding: provided also, that no such person shall be so registered in any year unless he shall have resided for six calendar months next previous to the last day of July in such year within the city or borough, or within the place sharing in the election for the city or borough, in respect of which city, borough, or place respectively, he shall be entitled to vote, or within seven statute miles thereof or of any part thereof. s. 27.

And be it enacted, That the premises in respect of the occupation of which any person shall be entitled to be registered in any year, and to vote in the election of any city or borough as aforesaid, shall not be required to be the same premises, but may be different premises occupied in immediate succession by such person during the twelve calendar months next previous to the last day of July in such year, such person having paid, on or before the twentieth day of July in such year, all the poor's rates and assessed taxes which shall previously to the sixth day of April then next preceding have become payable from him in respect of all such premises so occupied by him in succession. s. 28.

And be it enacted, That where any premises as aforesaid, in any such city or borough, or in any place sharing in the election therewith, shall be jointly occupied by more than one as owners or tenants, each of such joint occupiers shall, subject to the conditions hereinbefore contained as to persons occupying premises in any such city, borough, or place, be entitled to vote in the election for such city or borough, in respect of the premises so jointly occupied, in case the clear yearly value of such premises shall be of an amount, when divided by the number of such occupiers, shall give a sum not less than ten pounds for each and every such occupiers, but not otherwise. s. 29.

Occupiers may demand to be rated. s. 30.

Provision as to freeholders voting for cities and towns being counties of themselves; to extend to freeholds within the new boundaries. s. 31.

Freemen not to vote in boroughs unless resident, &c.; exclusion of freemen created since the first of March, one thousand eight hundred and thirty-one; gives provisions as to the freemen of Swansea, Loughor, Neath, Aberavon, and Kenfig. s. 32.

Reservation of other rights of voting in boroughs, residence, &c. required. s. 33.

Provisions as to persons now entitled to vote for New Shoreham, Cricklade, Aylesbury, or East Retford, in respect of freeholds. s. 34.

Exclusion of certain rights of voting in boroughs acquired since the first of March, one thousand eight hundred and thirty-one. s. 35.

And be it enacted, That no person shall be entitled to be registered in any year as a voter in the election of a member or members to serve in any future parliament, for any city or borough, who shall, within twelve calendar months next previous to the last day of July in such year, have received parochial relief or other alms, which by the law of parliament now disqualify from voting in the election of members to serve in parliament. s. 36.

Overseers to give notice annually, requiring county voters to send in their claims; persons once on the register not required to make any subsequent claims. s. 37.

Overseers to prepare lists of county voters, and to publish them every year; overseers to have power of objecting to any name inserted in the lists; to keep copies of lists for inspection. s. 38.

Barristers to have power to insert in the county lists the

names of claimants omitted by the overseers on proof of claim of qualification. s. 43.

Overseers to prepare lists of persons (other than freemen) entitled to vote in boroughs, and to publish them. s. 44.

No inquiry at the time of election, except to the identity of the voter, the continuance of his qualification, and whether he has voted before at the same election; according to the following form of questions as to these points:

1. Are you the same person whose name appears as A. B. on the register of voters now in force for the county of [or for the , riding, parts, or divisions, &c. or for the city, &c., as the case may be?]

2. Have you already voted, either here or elsewhere, at this election for the county of [or for the riding, parts, or division, of the county of or for the city, or borough of as the case may be?]

3. Have you the same qualification for which your name was originally inserted in the register of voters now in force for the county of &c. [or for the riding, &c., or for the city, &c., as the case may be, specifying in each case the particulars of the qualification as described in the register?]

And if any person shall wilfully make a false answer to any of the questions aforesaid, he shall be deemed guilty of an indictable misdemeanour, and shall be punished accordingly; and the returning officer or his deputy, or a commissioner or commissioners, to be for that purpose by him or them appointed, shall (if required on behalf of any candidate at the time aforesaid) administer an oath (or, in case of a Quaker or Moravian, an affirmation,) to any voter in the following form; (that is to say,)

You do swear, [or, being a Quaker or Moravian, do affirm,] that you are the same person whose name appears as A.B. on the register of voters now in force for the county of . [or for the riding, parts, or division of the county of or for the city or borough of as the case may be,] and that you have not before voted, either here or elsewhere, at the present election for the said county [or for the said riding, parts, or division of the said county, or for the said city or borough, as the case may be.] So help you God.

And no elector shall hereafter at any such election be required to take any oath or affirmation, except as aforesaid, either in proof of his freehold or of his residence, age, or other qualification or right of vote, any law or

statute, local or general, to the contrary notwithstanding; and no person claiming to vote at any such election shall be excluded from voting thereat, except by reason of its appearing to the returning officer, or his respective deputy, upon putting such questions as aforesaid, or any of them, that the person so claiming to vote is not the same person whose name appears on such register as aforesaid, or that he has previously voted at the same election, or that he has not the same qualification for which his name was originally inserted in such register, or except by reason of such person refusing to take the said oath or make the said affirmation, or to take or make the oath or affirmation against bribery, or any other oath or affirmation now required by law, and not hereby dispensed with; and no scrutiny shall hereafter be allowed by or before any returning officer with regard to any votes given or tendered at any election of a member or members to serve in any future parliament; any law, statute, or usage to the contrary notwithstanding. s. 58.

Persons excluded from the register by the barrister may tender their votes at elections: tender to be recorded. s. 59.

And be it enacted, That at every contested election of a knight or knights to serve in any future parliament for any county, or for any riding, parts, or division of a county, the polling shall commence at nine o'clock in the forenoon of the next day but two after the day fixed for the election, unless such next day but two shall be Saturday or Sunday, and then on the Monday following, at the principal place of election, and also at the several places to be appointed as hereinafter directed for taking polls; and such polling shall continue for two days only, such two days being successive days; (that is to say,) for seven hours on the first day of polling, and for eight hours on the second day of polling; and no poll shall be kept open later than four o'clock in the afternoon of the second day; any statute to the contrary notwithstanding. s. 62.

Counties to be divided into districts for polling. s. 63.

No voter to poll out of the district where his property lies. s. 64.

And be it enacted, That at every contested election of a member or members to serve in any future parliament for any city or borough in England, except the borough of Monmouth, the poll shall commence on the day fixed for the election, or on the next day following, or at the latest on the third day, unless any of the said days shall be Saturday or Sunday, and then on the Monday following the particular

day for the commencement of the poll to be fixed by the returning officer; and such polling shall continue for two days only, such two days being successive days, (that is to say) for seven hours on the first day of polling, and for eight hours on the second day of polling; and that the poll shall on no account be kept open later than four o'clock in the afternoon of such second day; any statute to the contrary notwithstanding. s. 67.

Polling for boroughs in England to be at several booths, not more than six hundred voting at one compartment in a booth; each person to vote at the booth appointed for his parish or district. If the booths are in different places, a deputy to preside at each place. s. 68.

Candidates, or persons proposing a candidate without his consent, to be at the expense of booths and poll clerks; limitation of expense, (that is to say) that the expense to be incurred for the booth or booths to be erected at the principal place of election for any county, riding, parts, or division of a county, or at any of the polling places so to be appointed as aforesaid, shall not exceed the sum of forty pounds in respect of any one such principal place of election, or any one such polling place; and that the expense to be incurred for any booth or booths to be erected for any parish, district, or part of any city or borough, shall not exceed twenty-five pounds in respect of any one such parish, district or part; and that all deputies appointed by the sheriff, or other returning officer, shall be paid each two guineas by the day, and all clerks employed in taking the poll shall be paid each one guinea by the day, at the expense of the candidates of such election. Houses may be hired for polling in, instead of booths. s. 71.

All election laws to remain in force, except where superseded by this act. s. 75. And this act not to extend to the universities of Oxford and Cambridge. s. 78.

Schedules to which the foregoing Act refers.

Schedule (A.)

Borough.	*County.*	*Borough.*	*County.*
Old Sarum,	Wiltshire.	Bramber,	Sussex.
Newtown,	Isle of Wight.	Bossiney,	Cornwall.
St. Michael's or Midshall,	Cornwall.	Dunwich,	Suffolk.
		Ludgershall,	Wiltshire.
Gatton,	Surrey.	St. Mawes,	Cornwall.

Borough.	*County.*	*Borough.*	*County.*
Beeralston,	Devonshire	Saltash,	Cornwall
West Looe,	Cornwall	Orford,	Suffolk
St. Germain's,	Cornwall	Callington,	Cornwall
Newport,	Cornwall	Newton,	Lancashire
Blechingly,	Surrey	Ilchester,	Somersetshire
Aldborough,	Yorkshire	Boroughbridge,	Yorkshire
Camelford,	Cornwall	Stockbridge,	Hampshire
Hindon,	Wiltshire	Romney (New)	Kent
East Looe,	Cornwall	Hedon,	Yorkshire
Corfe Castle,	Dorsetshire	Plympton,	Devonshire
Bedwin (Great),	Wiltshire	Seaford,	Sussex
Yarmouth,	Isle of Wight, Hampshire	Heytesbury,	Wiltshire
		Steyning,	Sussex
Queenborough,	Kent	Whitchurch,	Hampshire
Castle Rising,	Norfolk	Wootton Basset,	Wiltshire
East Grinstead,	Sussex	Downton,	Wiltshire
Lostwithiel,	Cornwall	Fowey,	Cornwall
Brackley,	Northamptonsh.	Milborne Port,	Somersetshire
Higham Ferrers,	Northamptonsh.	Addle Borough,	Suffolk
Wendover,	Buckinghamsh.	Minehead,	Somersetshire
Weobly,	Herefordshire	Bishop's Castle,	Shropshire
Winchelsea,	Sussex	Okehampton,	Devonshire
Tregony,	Cornwall	Appleby,	Westmoreland
Haslemere,	Surrey	Amersham,	Buckinghamsh.

SCHEDULE (B.)

Borough.	*County.*	*Borough.*	*County.*
Petersfield,	Hampshire	Shaftesbury,	Dorsetshire
Ashburton,	Devonshire	Thirsk,	Yorkshire
Eye,	Suffolk	Christchurch,	Hampshire
Westbury,	Wiltshire	Horsham,	Sussex
Wareham,	Dorsetshire	Great Grimsby,	Lincolnshire
Midhurst,	Sussex	Calne,	Wiltshire
Woodstock,	Oxfordshire	Arundel,	Sussex
Wilton,	Wiltshire	St. Ives,	Cornwall
Malmesbury,	Wiltshire	Rye,	Sussex
Liskeard,	Cornwall	Clitheroe,	Lancashire
Reigate,	Surrey	Morpeth,	Northumberlan.
Hythe,	Kent	Helston,	Cornwall
Droitwich,	Worcestershire	Northallerton,	Yorkshire
Lime Regis,	Dorsetshire	Wallingford.	Berkshire
Launceston,	Cornwall	Dartmouth,	Devonshire

SCHEDULE (C.)

Principal Places to be Boroughs.	*Returning Officers.*
Manchester (Lancashire)	The boroughreeve and constables of Manchester.
Birmingham (Warwickshire) ...	The two bailiffs of Birmingham.
Leeds (Yorkshire)	The mayor of Leeds.
Greenwich (Kent)	
Sheffield (Yorkshire)	The master cutler.
Sunderland (Durham)	
Devonport (Devonshire)	
Wolverhampton (Staffordshire).	Constables of the manor of the deanery of Wolverhampton.
Tower Hamlets (Middlesex) ...	
Mary-le-bone (Middlesex)	
Lambeth (Surrey)............	
Bolton (Lancashire)	The boroughreeves of Great and Little Bolton.
Bradford (Yorkshire)	
Blackburn (Lancashire)	
Brighton (Sussex)	
Halifax (Yorkshire)	
Macclesfield (Cheshire)	The mayor of Macclesfield.
Oldham (Lancashire)	
Stockport (Cheshire)	The mayor of Stockport.
Stoke-upon-Trent (Staffordshire)	
Stroud (Gloucestershire)	

SCHEDULE (D.)

Principal Places to be Boroughs.	*Returning Officers*
Ashton-under-Lyne (Lancash.).	The mayor of Ashton-und-Lyne.
Bury (Lancashire)	
Chatham (Kent)	
Cheltenham (Gloucestershire) ..	
Dudley (Worcestershire)	
Frome (Somersetshire)	
Gateshead (Durham)	
Huddersfield (Yorkshire)......	
Kidderminster (Worcestershire)	High-bailiff of Kidderminster.
Kendal (Westmoreland).......	The mayor of Kendal.
Rochdale (Lancashire)	
Salford (Lancashire)..........	The boroughreeve of Salford.
South Shields (Durham)	
Tynemouth (Northumberland) .	
Wakefield (Yorkshire)	
Walsall (Staffordshire)	The mayor of Walsall,
Warrington (Lancashire)	
Whitby (Yorkshire)	
Whitehaven (Cumberland)	
Merthyr Tydvil (Glamorgansh.)	

Schedule (E.)

Places sharing in the Election of Members.	*Shire Towns, or principal Boroughs.*	*County in which such Boroughs are situated.*
Alnwick, Holyhead, and Langefni	sharing with Beaumaris.	Anglesey.
Aberstwith, Lampeter, and Adpar	sharing with Cardigan.	Cardiganshire.
Llanelly	sharing with Caermarthen.	Caermarthenshire.
Pwllheli, Nevin, Conway, Bangor, & Criccieth,	sharing with Caernarvon.	Caernarvonshire.
Ruthin, Holt, and town of Wrexham	sharing with Denbigh.	Denbighshire.
Rhyddlan, Overton, Caerwis, Caergwrley, St. Asaph, Holywell, and Mold	sharing with Flint.	Flintshire.
Cowbridge and Llantrissent....	sharing with Cardiff.	Glamorganshire.
Llanidloes Welshpool, Machynlleth, Llanfyllin, and Newton ...	sharing with Montgomery.	Montgomeryshire.
Narbeth & Fishguard	sharing with Haverfordwest.	Pembrokeshire.
Tenby, Wiston, and Town of Milford	sharing with Pembroke.	Pembrokeshire.
Knighton, Rhayder, Kevinleece, Knucklas, and Town of Presteigne.........	sharing with Radnor.	Radnorshire.

Schedule (E 2.)

Places sharing in the Election of Members.	*Places therein from which the seven Miles are to be calculated.*
Newport	The market place.
Usk	The town hall.
Aberystwith	The bridge over the Rheidal.
Lampeter	The parish church.
Adpar	The bridge over the Teivi.
Pwllheli	The guildhall.
Nevin	The parish church.

Places sharing in the Election of Members.	*Places therein from which the seven Miles are to be calculated.*
Conway	The parish church.
Criccieth	The castle.
Ruthin	The parish church called St. Peter's.
Holt	The parish church.
Rhyddlan	The parish church.
Overton	The parish church.
Caerwis	The parish church.
Caergwrley	The parish church of Hope.
Cowbridge	The town hall.
Llantrissent	The town hall.
Tenby	The parish church.
Wiston	The parish church.
Knighton	The parish church.
Rhayder	The market place.
Kevinleece	The parish church.
Knucklas	The site of the ancient castle of Cnweglas.
Swansea	The town hall.
Loughor	The parish church.
Meath	The town hall.
Aberavon	The bridge over the Avon.
Kenfig	The parish church of Lower Kenfig.

SCHEDULE (F.)

Counties to be divided

Cheshire.	Gloucestershire.	Northamptonsh.	Suffolk.
Cornwall.	Hampshire.	Northumberland	Surrey.
Cumberland.	Kent.	Nottinghamsh.	Sussex.
Derbyshire.	Lancashire.	Shropshire.	Warwickshire.
Devonshire.	Leicestershire.	Somersetshire.	Wiltshire.
Durham.	Norfolk.	Staffordshire	Worcestershire.
Essex.			

SCHEDULE (F 2.)

Counties to return three Members each.

Berkshire.	Cambridgeshire.	Herefordshire.	Oxfordshire.
Buckinghamsh.	Dorsetshire.	Hertfordshire.	

SCHEDULE (L.)

Boroughs.	*First Contents and Boundary.*
Ashton-under-Lyne	The division of the parish of Ashton-under-Lyne, called the Towns Division.
Birmingham	Parishes of Birmingham and Edgbaston, and townships of Bordesly, Deritend, and Duddeston, with Nechels.

Boroughs.	*First Contents and Boundary.*
Blackburn	Township of Blackburn.
Bolton	Townships of Great Bolton, Haulgh, and Little Bolton, except the detached part of the township of Little Bolton, which lies to the north of the town of Bolton.
Bradford	Township of Bradford.
Brighthelmstone..	Parishes of Brighthelmstone and Hove.
Bury	Township of Bury.
Chatham	From the easternmost point at which the boundary of the city of Rochester meets the right bank of the river Medway, southward along the boundary of the city of Rochester, to the boundary stone of the said city, marked 5; thence in a straight line to the windmill in the parish of Chatham, on the top of Chatham Hill; thence in a straight line to the oil-windmill, in the parish of Gillingham, between the village of Gillingham and the fortifications; thence in a straight line through Gillingham Fort, to the right bank of the river Medway; thence along the right bank of the river Medway, to the point first described.
Cheltenham......	Parish of Cheltenham.
Devonport.......	Parish of Stoke Damerill, and township of East Stonehouse.
Dudley	Parish of Dudley.
Finsbury	Parishes of St. Giles in the Fields; St. George, Bloomsbury; St. George the Martyr; St. Andrew above Bars; St. Luke; St. Sepulchre, except so much as in the city of London; St. James, Clerkenwell, except so much as is locally in the parish of Hornsey; ecclesiastical districts of Trinity, St. Paul, and St. Mary, in the parish of St. Mary, Islington; Liberties of Saffron Hill, Hatton Garden, and Ely Rents; Ely Place, the Rolls; Glass-house Yard; Precinct of the Charter House; Lincoln's Inn; Gray's Inn; so much of Furnival's Inn, and Staples Inn, as is not within the city of London.
Frome..........	Town of Frome, as within the limits now assigned to the town of Frome by the Trustees under the provisions of an Act passed in the first and second year of his present Majesty, intituled, "An Act for better repairing and improving several roads leading to "and from the town of Frome, in the county "of Somerset.

Boroughs.	*First Contents and Boundary.*
Gateshead	Parish of Gateshead.
Greenwich.......	Parishes of St. Paul and St. Nicholas, Deptford; and so much of the parishes of Greenwich, Charlton, and Woolwich, as lie between the Thames and the Dover Road.
Halifax	Township of Halifax.
Huddersfield.....	Township of Huddersfield.
Kendal..........	Townships of Kendal and Kirkland, and all such parts of the township of Nethergaveship as adjoin the township of Kendal.
Kidderminster....	Borough of Kidderminster.
Lambeth	Parishes of St. Mary, Newington; St. Giles, Camberwell, except the manor and hamlet of Dulwich; Precinct of the Palace; and so much of the parish of Lambeth as is north of the ecclesiastical division of Brixton.
Leeds...........	Borough of Leeds.
Macclesfield	Borough of Macclesfield
Manchester	Townships of Manchester, Chorlton Row, Ardwick, Hulme, Beswick, Cheetham, Bradford, Newton, and Harper Hey.
Mary-le-bone.....	Parishes of St. Mary-le-bone and Paddington; and so much of the parish of St. Pancras as is south of the Regent's Canal
Merthyr Tydvil...	Parishes of Merthyr Tydvil and Aberdare.
Oldham	Township of Oldham.
Rochdale........	Town of Rochdale, as within the provision of an Act passed in the sixth year of his late Majesty, intituled "An Act for lighting, "cleansing, watching, and regulating the "town of Rochdale, in the county palatine of "Lancaster."
Salford..........	Townships of Salford, Pendleton, and Broughton,
Sheffield.........	Townships of Sheffield, Attercliffe-cum-Darnell, Brightside, Bierlow, and Nether Hallam.
South Shields	Townships of South Shields and Westoe.
Stockport	Borough of Stockport, Hamlets of Brinksway and Edgeley.
Stoke-upon-Trent.	Townships of Tunstall, Burslem, Hanley, Shelton, Penkhull, with Boothen, Lane End, Longton, Fenton Vivian, Fenton Culvert; hamlet of Sneyd; and Vill of Rushton Grange.
Stroud	Parishes of Stroud, Bisley, Painswick, Pitchcomb, Randwick, Stonehouse, Eastington, Leonard Stanley, except Lorridge's Farm; King's Stanley, Roborough, Minchinhampton, Woodchester, Avening, Horsley.

Boroughs.	*First Contents and Boundary.*
Sunderland	Parish of Sunderland; Townships of Bishop Wearmouth Panns, Monk Wearmouth, Monk Wearmouth Shore, and Southwick.
Tower Hamlets ..	Liberties of the Tower, and Tower division of Oussulston Hundred, except the parishes of St. John, Hackney; St. Mary, Stratford-le-Bow; and St. Leonard, Bromley.
Tynemouth	Townships of Tynemouth, North Shields, Chirton, Preston, and Cullercoates.
Wakefield........	Township of Wakefield.
Walsall	Borough of Walsall, except the parts detached from the Borough of Walsall.
Warrington	Township of Warrington.
Whitehaven......	Township of Whitehaven.
Whitby	Township of Whitby.
Wolverhampton ..	Townships of Wolverhampton, Bilston, Wednesfield, and Willenhall; and parish of edgeley.

Form of Notice to the Overseer of a Claim to Vote for a County.

" *To the Overseers of the Parish of*

" I hereby give you notice, that I claim to be inserted in the list of voters for the county of [*or*, for the riding, parts, *or* division of the county of , *as the case may be*], and that the particulars of my place of abode and qualification are stated below.

" Dated the day of in the year 18

(Signed) " P. A.

" *Place of abode*, at

" *Nature of qualification*, freehold house, or warehouse, stable, field, rent-charge, &c. [*as the case may be, giving such a description of the property as may serve to identify it.*]

" *Where situate in this parish:* street. [*If the property be not in any street or lane, say* the name of the property, as farm, or the name of the occupier.]"

Form of Notice to the Overseer of a Claim to Vote for a Borough.

" *To the Overseers of the Parish of ; or, to the Town Clerk of the City or Borough of*

' I hereby give you notice, that I claim to have my name inserted in the list made by you of persons entitled to vote in the election of a member [*or* members] of parliament for the city, &c. of , and that my qualification consists of a

house in street, in your parish [*as the case may be, or, in the case of a freeman*, my qualification is, that I am a freeman of , and that I reside in street].

"Dated the day of 18

(Signed) R S.

Form of Notice of Objection to a Claim to Vote.

"*To the Overseers, &c.*

"I hereby give you notice that I object to the name of being inserted in the list of persons entitled to vote in the election of a member [*or* members] for the city, &c. of , and that I shall bring forward such objection at the time of revising such list.

"Dated the day of 18

(Signed) "P. S. of ."

Form of Notice of the making out of the Lists of County Voters, to be given by the Overseers.

"We hereby give notice, that we shall, on or before the last day of July in this year, make out a list of all persons entitled to vote in the election of a knight or knights of the shire for the county [or for the riding, parts, or division of the county of as the case may be] in respect of property, situate wholly or in part within this parish [or township]; and all persons so entitled are hereby required to deliver or transmit to us, on or before the 20th day of July in this year, a claim in writing, containing their christian name and surname, their place of abode, the nature of their qualification, and the name of the street, lane, or other like place, wherein the property in respect of which they claim to vote is situated; and if the property be not situated in any street, lane, or other like place, then such claim must describe the property by the name by which it is usually known, or by the name of the tenant occupying the same; and each of such persons so claiming must also, at the same time, pay us the sum of one shilling. Persons omitting to deliver or transmit such claim, or to make such payment, will be excluded from the register of voters for this county [or riding, parts or division, as the case may be]. But persons whose names are now on the register are not required to make a fresh claim, so long as they retain the

same qualification, and continue in the same place of abode as described in the register.

(Signed) A. B. / C. D. } *Overseers, &c.*"

Form of the Lists of County Voters to be made out by the Overseers on the last day of July.

" County of   to wit, [*or* riding, parts, or division of the county of   as the case may be].

" The list of persons entitled to vote in the election of a knight or knights of the shire, for the county of   [*or* for the riding, parts, or division of the county of   , *as the case may be*], in respect of property situate within the parish of   [*or* township, *as the case may be.*]"

Christian Name and Surname of each Voter at full length.	Place of Abode.	Nature of Qualification.	Street, Lane, or other like Place in this Parish (or Township) where the Property is situate, or the name of the property, or Name of the Tenant.
Adams, John	Cheapside, London	Freehold House.	King Street
Ailey, James	Long Lane, in this Parish.	Copyhold Field.	John Edwards, Tenant
Ball, William	Market Street, Lancaster,	Lease of Warehouse for years.	Duke Street
Boyce, Henry	Church Street, in this Parish.	50 Acres of Land as Occupier.	Highfield Farm.

Against every name to which the overseers or any other person shall object, they shall write the words " objected to" in the margin of the list. They shall then sign it, and cause it to be fixed on the doors of all churches and chapels on the two Sundays after it is made.

Form of the Lists of Registration of Borough Voters,

Which are to be made out on or before the last day of July, and fixed on the doors of churches and chapels on two Sundays next after they have been made.

No 1.—The list of persons entitled to vote in the election of a member [*or* members] for the city [*or* borough] of in respect of property occupied within the parish [*or* township] of by virtue of an act passed in the second year, of the reign of King William the Fourth, intituled, "An Act to amend the representation of the People in England and Wales."

Christian Name and Surname of each Voter at full length.	Nature of Qualification.	Street, Lane, or other Place in this Parish where the Property is situate.
Ashton, John . . .	House	Church Street
Atkinson, William . .	Warehouse	Bolt Court, Fleet Street

(Signed) A. B. } C. D. } *overseers, &c.*

No. 2.—The list of all persons (not being freemen) entitled to vote in the election of a member [*or* members] for the city [*or* borough] of in respect of any rights other than those conferred by an act passed in the second year of the reign of King William the Fourth, intituled, "An Act to amend the Representation of the People in England and Wales."

Christian Name and Surname of each Voter at full length.	Nature of Qualification.	Street, Lane, or other Place in this Parish where the Property is situate. (If the right of voting does not depend on property, then state the place of abode.)

(Signed) A. B. } C. D. } *Overseers, &c.*

No. 3.—The list of the freemen of the city [*or* borough] of [*or* of] being a place sharing in the election with the city [*or* borough] of , entitled to vote in the election of a member [*or* members] for the said city [*or* borough].

Christian Name and Surname of each Freeman at full length.	Place of his Abode.

(Signed) A. B. { *Town Clerk* of the said city [or borough, or place].

No. 4.—A list of such of the freemen of London as are liverymen of the company of entitled to vote in the election of members for the city of London.

Christian Name and Surname of the Voters at full length.	Street, Lane, or other Description of his Place of Abode.

(Signed) A. B. *Clerk.*

No. 5.—Notice of claim to be given to the returning officer or officers of the city of London, and to the clerks of the respective livery companies.

"*To the returning Officer or Officers of the City of London* [*or to the Clerk of the Company of*].

"I hereby give you notice, that I claim to have my name inserted in the list made by the clerk of the company of [*or in case of notice to the clerk, say,* made by you] of the liverymen of the said company [*or in case of notice to the clerk, say,* of the liverymen of the company of] entitled to vote in the election of members for the city of London.

"Dated the day of

(Signed) A. B. { [Place of abode. Name of company."]

No. 6.—Notice of objection to parties inserted in the list of the livery.

"*To Mr. W. B.*

"I hereby give you notice, that I object to your name being retained in the list of persons entitled to vote as freemen of the city of London, and liverymen of the company

of in the election of members for the said city, and that I shall bring forward such objection at the time of revising the said list.

"Dated the day of

(Signed) A. B. [Place of abode]."

The Act to amend the representation of Scotland, 2 and 3 William 3, c. 66, was passed on the 17th of July, 1832.

The following are the general provisions, which are here inserted, in order to keep the subject of the representation together.

Scotland is hereafter to have fifty-three representatives; thirty for counties, and twenty-three for towns. s. 1.

And be it enacted, That from and after the passing of this Act, no person shall acquire, by succession, purchase, or gift or otherwise, the right of voting for a member of Parliament, either in shires or in cities, burghs, or towns, except by one or other qualifications hereinafter prescribed and directed. Provided always, that all persons who at the passing of this act shall be lawfully on the roll of freeholders of any shire in Scotland, or who shall there be entitled to be put on such roll, or who shall, previous to the first day of March, one thousand eight hundred and thirty-one,* have become the owners or superiors of lands affording the qualification for being so enrolled, shall, so long as they retain the necessary qualification on which they are now enrolled or are entitled to be enrolled as aforesaid, be entitled to be registered and to vote as hereinafter directed in the election of a member for such shire. s. 6.

And be it enacted, that from and after the passing of this act, every person not subject to any legal incapacity, shall be entitled to be registered as hereinafter directed, and thereafter to vote at any election for a shire in Scotland, who, when the sheriff proceeds to consider his claim for registration in the present or in any future year, shall have been, for a period of not less than six calendar months next previous to the last day of August, in the present, or the last day of July in any future year, the owner, (whether he has made up his titles, or is infeoft, or not,) of any lands, houses, feu duties, or other heritable subjects (except debts heritably secured) within the said shire, provided the subject or subjects on which he so claims shall be of the yearly value of

ten pounds, and shall actually yield or be capable of yielding that value to the claimant, after deducting any feu duty, ground annual, or other consideration which he may be bound to pay or to give, or account for as a condition of his right, provided he be, by himself, his tenants, his vassals, or others, in possession of the said subjects, and be either himself in the actual occupation or in receipts of the profits and issues thereof to the extent above mentioned. Provided always, that where the whole profits and issues of any such subject do not arise annually, but at longer intervals, the worth and amount of such occasional profits shall be taken into computation in estimating the annual value. Provided also, that where any property which would entitle the owner to be registered and to vote as above shall come to any person, within the said period of six months, by inheritance, marriage, marriage settlement, or *mortis causa* disposition, or by appointment to any place or office, such person shall be entitled to be registered on the first occasion of making up the lists of voters, as hereinafter provided, next following such succession or acquisition. s. 7.

Right of voting for burghs and towns no longer to be in town councils and delegates, but in qualified inhabitants. s. 10.

Occupants of houses worth ten pounds a-year entitled to vote in cities, burghs, and towns. s. 11.

The act to amend the representation of the people of Ireland, 2 and 3 William IV. c. 88, was passed on the 7th of August, 1832, and contains the following provisions:

The right of voting in counties at large is extended to leaseholders. s. 1.

And to copyholders. s. 2.

Not to affect present voters in counties. s. 3.

No vote out of tenements in a county which give a right to vote in a city, town, or borough, s. 4.

Right of voting in counties of cities and counties of towns; £10 freeholders; £20 leaseholders; £10 householders. s. 5.

No freehold of less than £10 yearly value to give a vote in a city or town; saving of registered forty shilling freeholders now entitled to vote. s. 6.

Right of voting in boroughs to be enjoyed by occupiers of houses, &c. of the annual value of £10. s. 7.

And be it enacted, That the city of Limerick, the city of Waterford, the borough of Belfast, the county of the town of Galway, and the University of Dublin, shall each respectively return one member to serve in each future parlia-

ment, in addition to the member which each of the said places is now by law entitled to return. s. 11.

No unregistered person to vote; and six months' possession is required before registry. s. 13.

ACCOUNTS OF OVERSEERS.

Overseers and churchwardens are now required, by 17 Geo. II. c. 38, to deliver in to their successors, within fourteen days after they are nominated, a just, true, and perfect account in writing, and signed under their hand, of all monies received, or rated and assessed, although not received; and of all goods, chattels, stocks, and materials, that shall be in their hands, or in the hands of any of the poor, in order to be wrought; and of all monies paid by such churchwardens and overseers so accounting, and of all other things concerning the said office. And they shall also pay and deliver over all sums of money, goods, &c. in their hands, to their successors within fourteen days as aforesaid.—The said accounts to be verified upon oath or affirmation before one or more justices, who shall sign and attest such accounts, &c. without fee;—any person being at liberty to inspect such accounts on the payment of sixpence, and to have copies at the rate of sixpence for every 300 words, by 17 George II. c. 38, amended by 50 Geo. III. c. 49, which requires such accounts to be presented to two justices at a special sessions to be held for that purpose within the fourteen days after the appointment of the new officers, which justices may examine upon oath, and reduce or strike out any unfounded or exorbitant charges; and if churchwardens or overseers refuse or neglect to submit such accounts, or to verify them on oath, or to deliver them over to their successors within ten days from the signing and attesting of the accounts, they may be committed, until they comply; and any money, &c. due from them may be recovered, with all costs, by distress, &c. And a writ of *mandamus* will lie by the new to compel the old overseers to deliver over all books and papers relating to their office.

An overseer should make up his accounts, and pay over his balances to some other overseer, *before* he removes from the place for which he was appointed; and the executors, &c. of an overseer deceased must make up his accounts within forty days, and pay the balance to the parish in preference to any other creditor.

Overseers are only allowed such *expenses* in their office as

are absolutely necessary, beyond the proper relief of the poor. They cannot claim any remuneration for their exertions, nor charge the rate with inapplicable disbursements; nor would they be allowed for relief to the poor, unless registered in the parish books, except in cases of evident emergency. But if they have expended their own money in the maintenance of the poor, they may make a rate for the relief of the poor, and repay themselves out of the proceeds before they go out of office; though no rate can be made afterwards to reimburse them; nor can an overseer for *successive* years make a rate in the *last*, to reimburse himself for an expenditure in the *preceding* years. But by 41 Geo. III. c. 23, it is enacted that where churchwardens, overseers, or guardians of the poor, have not collected a sum sufficient for the maintenance of the poor, and have advanced sums for that purpose, they may be reimbursed by their successors; and if refused payment fourteen days after demand in writing, they may apply to the quarter sessions, on giving notice to such successors, when the sessions may make such order for payment as they think fit, and such order may be enforced by distress, &c. Succeeding overseers may also levy any arrears of legal assessments, and so reimburse their predecessors; and where an overseer has expended his own money, while his colleague has a surplus of the parish funds, the sessions, on appeal, will direct the surplus to be applied to the reimbursement.

After an overseer's accounts are allowed by the magistrate, any parishioner may appeal against objectionable items, on giving notice of his intention; but this appeal should be entered at the next sessions after such allowance.

CONSTABLES.

The origin of the office of constables appears involved in much obscurity; but they were officers of common law in the times of Saxons, when there were both constables of hundreds and petty constables, now called high constables and petty constables; the first being for the entire hundred, and the second for some particular parish, village, hamlet, tithing, borough, or liberty;—but no person is qualified to be a constable, who is not an inhabitant of the place, and actual

residence in the parish is essential. And as every inhabitant may not be a fit person for the office, which ought to be filled by the *abler* sort of householders, if a very ignorant or poor person be chosen, he may be by law discharged, and a proper person appointed in his stead.

The *high constables* are usually chosen at the sessions, or by the majority of the justices of the division; and are either sworn at the sessions, or by warrant from the sessions.

And *petty constables* are to be chosen by *the leet*, or if there be none, by the *town*. In some parishes the petty constables and tithing-men are elected by the inhabitants at a vestry; but however chosen, they are to be sworn and placed in office by the lord of the manor, or his steward, or by the sheriff;—and if the party is present he ought to be sworn forthwith; or if the court be adjourned before the oath is taken, the steward should issue a precept to command the party to take the oath before one justice of the peace.

The justices of the peace have also, for the preservation of the peace, the power of nominating and swearing other persons who have not been chosen by any court leet, on the neglect of the sheriff or lords to hold their courts, or on any public necessity that may arise. The justices have also the power of removing unfit persons; and if a constable die, or leave the parish, the justices may supply his place until the court leet shall be held. The following is the form of the oath to be taken by a constable:—

"You shall well and truly serve our sovereign lord the king [and the lord of this leet, *if appointed in the court leet*] in the office of a constable in and for the hundred of A, [*or* township of B, *or* parish of C, *as the case is*,] in the county of   , for the year ensuing, according to the best of your skill and knowledge."

High constables are also to take such *oaths* or *declarations*, as other persons who qualify for offices; but petty constables are only called upon to take the oath as above.

Naturalised foreigners are *not* eligible; and college officers, attorneys, barristers, members of parliament, military officers, physicians, &c. are generally exempt, but might perhaps be called upon where there are not other fitting persons to be found. Surgeons, apothecaries, dissenting and catholic ministers, licensed victuallers, prosecutors of felons within the parish, and militia men, are exempt by statute. In the city and liberty of Westminster, no person is liable to serve as constable who is above the age of *sixty-three;* and the crown may exempt

particular persons, where there are others to supply the office.

If a constable, duly appointed, and having express notice of such appointment, *refuse* to be sworn, a justice may bind him over to the assizes or sessions, at either of which he may be *indicted* for such refusal; or he may be presented and fined at the next court leet. It seems, however, the justices have no power to commit any person for the refusal only, if he refuses to be bound over: but he may be committed for a fine, if convicted on the indictment.*

The constable is authorised by the common law to arrest felons, and all suspicious persons who go abroad in the night, and sleep by day, or who resort to houses of ill-fame, or keep suspicious company, and to suppress affrays; both high and petty constables being conservators of the peace within their several limits.

The constable is the proper officer of the justice of the peace, and is bound to execute his warrants; he is also to present all offences inquirable into at the town or leet; to attend coroners for the execution of their warrants; and the constables of the hundreds are required to attend upon the judges of assize, upon the gaol delivery, and the justices at the sessions, to return warrants, and present offences.

As constables are conservators of the peace, if any man make an affray or an assault upon another in the *presence* of a constable, or threaten to kill, beat, or hurt another; or shall be in a fury, ready to break the peace, the constable may commit him to safe custody, and carry him before a justice, to find surety for the peace; which surety, indeed, the constable himself may take by obligation, to be sealed and delivered to the king's use; and the party may be imprisoned until such surety be given. But constables have no authority, without a warrant, to arrest for a breach of the peace, *after* the affray is over; nor can they imprison a party for a mere trespass, where an indictment will not lie; as in all cases there must exist a reasonable ground for suspicion against the parties who are detained. And in all doubtful cases, it is advisable for the constable to provide himself with a warrant, as he will then, as a parochial officer, be under the protection of the 24th

* It is absolutely necessary in all pleadings in any action concerning such fines or amercements, and in all indictments for such refusal, to set forth *especially* and *expressly*, the *manner* of every such election, appointment, notice, and refusal, and before whom the court was holden.

Geo. II. c. 44, which enacts, that persons bringing actions against a constable, &c. for any thing done in obedience to any warrant, shall make a demand in writing, by themselves or their attorneys, of a perusal and copy of the warrant, written; and such demand, signed by the party complaining, must be made, or left at the usual place of such constable's abode, and such demand must be refused or neglected by the constable for six days before the action can be brought by the complainants. And if before the expiration of the said six days the constable shows the warrants and permits a copy of it to be taken, then the parties making complaint *must join* the magistrate who granted the warrant with the constable executing it, in the action, which action must also be brought *within six months* after the cause has arisen, and in the same county. If the justice be *not* so joined in the action, the constable will be entitled to a verdict, although the justice might have had no jurisdiction, and the warrant be altogether illegal. And if the justice is joined in the action, the jury shall also find *for the constable* upon proof of the warrant. And if the verdict be given against the justice, the plaintiff shall recover his costs against such justice, taxed in such manner as shall *include* the costs which the plaintiff would have to pay to the constable for whom the verdict is directed to be found.

But this protection to constables only extends to cases *where there has been a warrant* from a justice of the peace, and *the constable is acting under it;* and not to cases where he acts upon a *charge only*, however serious it may be, as burglary or the like.

A constable is not liable to an action for false imprisonment who commits a person given to him in charge, although the charge is *unfounded*, unless he makes himself a party in oppressing the party committed, he knowing the charge to be unfounded; for if a regular charge is made before him of felony, he is warranted by law in arresting the party accused.

A constable may appoint a deputy to execute a warrant directed to him, when from sickness, absence, or otherwise, he cannot do it in person; but the superior must be answerable for the deputy, unless the deputy be duly allowed and sworn, in which case he must answer for himself. But no constable can act under a warrant out of his own district.

If an action is brought against any constable for any thing done by virtue of his office, he, and all others aiding and assisting him, may plead the general issue, and if

he recover, he shall have double costs. The action must also be laid in the county where the fact was committed; and brought within six months after the cause arises.

Constables are *every three months*, and within *fourteen days* after they go out of office, to deliver to the overseers an account of all receipts and expenses on account of the parish; to be reimbursed, if approved of by the parishioners out of the poor rate. If such account be disputed, the constable may apply to one justice, (giving reasonable notice to the overseers,) who may examine the account, and determine what shall be allowed. The overseers may, however, appeal to the sessions against the decision of such justice.

The justices in sessions may make such rules with relation to costs as they think just, which rules become binding on receiving the signature of one of the judges.

Two justices of the peace may order allowances to be made to special constables appointed to execute any warrant for felony; and may also make any reasonable compensation to any high constable for any extraordinary expenses incurred in the execution of his duty in any case of tumult, riot, felony, &c. to be paid out of the county rate, after being submitted to the sessions on the oath of the parties in whose favour the order is made, 41 George III. c. 78.

By 1 George IV. c. 37, justices may give allowance to special constables appointed under the act; and by 7 and 8 George IV. c. 31, the high constables who may be sued in actions against the hundred, &c. are to prove their necessary expenses before two justices, who make an order for payment on the treasurer of the district. Constables are also entitled to their expenses in collecting the county rate; for taking deserters; and collecting fines for not furnishing the complement of the militia.

The following is a list of fees usually allowed to the constables for the respective services in most parishes:—

	£	*s.*	*d.*
For the oath of office	0	1	0
For the service of any warrant at the instance of of the parish (if served in the parish) . . .	0	1	0
For every mile beyond the limits of the parish	0	0	6
If beyond the distance of five miles, and not exceeding a day's journey	0	5	0
For every journey of one day or more, per day, including all expenses	0	10	0

	£	s.	d.
For attending the bench of justices at their petty sessions	0	1	6
The like at their general or quarter sessions (including expenses)	0	10	0
Attending the coroner with notice of death	0	4	6
Summoning a jury and attending the inquisition	0	6	8
Expenses of the jury	0	10	0
Billeting of soldiers	0	0	0
Pressing of waggons for soldiers' baggage	0	0	0
Attending on a search-night, or at a fair in the parish	0	2	0
Attending to see that shops and public houses are shut during divine service on Sundays	0	0	0
Attending on the day of election of a member of parliament, unless paid by the candidate	0	5	0
For conveying a felon or other prisoner to gaol when the parish is liable to pay the expenses, (including expenses)	0	10	0
Making a list of jurors to return to the sessions	0	0	0
Verifying the same	1	1	0
Making out a list of persons to serve in the militia or any other military force	0	1	0
Verifying the same	0	1	0
Summoning any person balloted in the militia, &c.	0	1	0
Service of any poors'-rate summons	0	0	4
Attending as a peace officer within the parish on any public occasion, or at any execution of any sentence on any criminal	0	2	6

THE WATCH AND WARD.

The statute of Winchester, 13 Edward I. s. 2, c. 4, enacts, "that all towns shall be kept as it had been used in times passed; that is, to wit, from *Ascension*-day to *Michaelmas* in every city, *six men* shall keep watch at every gate; in every borough, *twelve men;* every town, *six* or *four*, according to the number of the inhabitants, and shall watch the town continually all night, from the sun-setting to the sun-rising." And by 5 Henry IV. c. 3, the justices are empowered to make inquiry and punish them which be found in default." This seems the origin of the system of "*watching*," which has been partially displaced by more modern systems of police. This "watch" had the power of arresting any stranger who might pass until the

morning, "and then, if no suspicion be found, he shall go quit;" but if they find suspicion, "they shall deliver him to the sheriff, that is, to the common gaol; and if such person would not obey the arrest," hue and cry shall be levied upon them, and the watchmen shall follow them with *all* the town, until they be taken and delivered to the sheriff, or, "the watchmen may deliver such persons to the constable, or convey them to a justice to be examined;" and if a constable permit a suspected person to escape before he can be taken before a justice, he is guilty of a misdemeanor, and may be indicted for it.

By 22 George III. c. 58, every constable, headborough, or tythingman, where they shall be officers, and every beadle within his ward, and *every watchman during such time only as he is on his duty* shall and may apprehend every person who may be suspected of having or carrying, or any ways conveying, at any time after sun-setting and before sun-rising, any goods suspected to be stolen, and the same together with such person, to convey before any justice, to be dealt with according to law.

In this species of watch, in which the watchmen may be appointed by the inhabitants, or authorities, in the usual form, or by the justices in session, or even by the constables themselves, the watchmen seem a sort of ministers or assistants to the constables, to be under the same protection, and to have similar legal powers. Indeed, the watchman is said to have a double protection of the law; first, as assistant to the constable, when the constable is present, as every man assisting the constable has the same protection as the constable himself; and secondly, as the law takes notice of the watchman's office under its authority besides; and, therefore, killing a watchman, in the execution of his office, is murder, and by 5 Anne, c. 31, if a watchman be killed in apprehending a burglar, his representative is entitled to £40.

The justices in sessions may issue their warrants to the constables of hundreds, to issue warrants to the petty constables to keep "*watch by night*," and "*ward by day*," for any given period, and to apprehend all rogues, vagabonds, and other wandering and disorderly persons, and take them before a justice to be dealt with according to law. Those who refuse to serve where such watch is ordered may be indicted at the sessions.

PARISH CLERKS

Were originally clerks in holy orders, whose business was to assist the officiating minister at the altar, and in other affairs; but at present, the business of parish clerks consists principally in directing the psalmody, and leading the responses of the congregation. The office is generally, although not always, filled by a layman; and they are either nominated by the incumbent, or chosen by the parishioners, the churchwardens, or the vestry, according to the custom.

The recent statutes for authorising the erection of new churches, place the nomination of parish clerks in the hands of the minister; only requiring, that the parties appointed shall be twenty years of age, able to read and write, and have sufficient knowledge of music to lead the psalmody of the church. The ordinary generally licenses them after their appointment; and by the common law, they are held to possess freeholds in their office, upon which they may vote at elections. Their emoluments arise from a fixed salary, besides fees on christenings, marriages, burials, &c.

VESTRY CLERKS

Are officers entirely dependent upon the will of the inhabitants; and are generally chosen at vestry-meetings, and by poll of the parish at large when required. The appointment, it is said, may be revoked at any subsequent vestry, before the termination of the year; but, perhaps, after election for the year, this may be questioned. The business of the vestry clerk is to attend all parish meetings, and meetings of the officers, when required; to minute carefully all the proceedings; to draw up and copy all orders and other acts of the vestry; to furnish copies when required to the parishioners, on payment of the fees required by law; to permit the inspection of the parish books, &c.; but he is not compellable to produce or permit copies of documents in his possession to be taken for any other than parochial purposes.

The church and poor rates are in common prepared by the vestry clerk, who also generally examines questions of settlement; but the vestry clerk has no right to vote or take any part in the business or questions before the vestry, although it frequently happens that vestry clerks usurp the whole management of parochial affairs, much more to their own advantage than the benefit of the

parish; and the churchwardens and overseers, who are in law the responsible parties, ought to take great care that advantage is not taken of their want of experience in parish affairs, to lead them into difficulties for which they may find themselves inconveniently accountable.

Any person may be appointed to the office of vestry clerk, whether an inhabitant or not. Attorneys have been generally appointed in large parishes; but this having led to much litigation, the custom seems on the decline, and other competent persons have been considered preferable. However, whether the vestry clerk be a professional or an unprofessional man, the parish officers cannot be too vigilant in the superintendence of their own affairs.

THE SEXTON

Is an inferior officer of the church, appointed by the minister, whose duty it is to keep the church clean and warm; to prepare for the burial of the dead; to attend the church during service, for the accommodation of the parishioners with seats, &c.; to prevent disturbances, and remove all disorderly persons; and to provide water, candles, and other requisites for the performance of the ceremonies of the church.

The sexton is paid according to the custom of the parish, and is also entitled to his customary fees. The office is sometimes executed by women, who may also vote in elections to this office, which is considered freehold, and the persons holding it only removable for good and sufficient cause.

THE BEADLE

Is a subordinate officer of the parish, generally chosen by the inhabitants in vestry, whose business it is to deliver notices to the parishioners of the time and place of vestries and other meetings appointed by the churchwardens and overseers: to attend all such meetings to preserve order, and to execute such directions as may be given. They are also to assist the parochial authorities in the taking of beggars into custody, passing vagrants, and generally to obey such orders relating to parish affairs, as they may receive from the superior officers. The appointment is during pleasure, or good behaviour, and may be revoked at any time.

SAVINGS BANKS.

THESE institutions, established under the sanction of the legislature for the depositing of small sums of money, which are allowed to accumulate at compound interest, and which may be withdrawn at pleasure from such banks, without charge or deduction, are generally regulated by the statute 9 George IV. c. 92; and the provisions are—

That persons forming a society for such deposits of money, must submit the rules and formation of such society for the approval of the justices, at the general quarter sessions, and of the Commissioners for the Reduction of the National Debt (s. 2.)

The rules, &c. must be written in a book, open to the inspection of the depositors; and a copy left with the clerk of the peace, to be filed at the sessions, the clerk being bound to return a certificate of enrolment within *ten* days, and receive a fee of ten shillings. Alterations, &c. may be afterwards made, which must be entered, allowed, and certified in the same manner, the clerk receiving for them a fee of only five shillings (s. 3.)

Before the rules, or alterations, are deposited with the clerk of the peace, they must be *submitted to a barrister*, appointed by the Commissioners of the National Debt, to ascertain whether they are conformable to law; the barrister is to give a certificate of such conformity, or to point out any repugnancy, for a fee of *one guinea*. The transcript of the rules, signed by two trustees, with the barrister's certificate, is then to be submitted to the justices at quarter sessions, who may still reject whatever rules they disapprove, the clerk of the peace giving notice of such rejection to the two trustees, within ten days. But rules merely relating to hours of attendance, and matters of business as to time, may be made and altered, without being submitted to the revising barrister (s. 4.)

The rules become binding on officers and depositors, as soon as entered and deposited; and may then be received in evidence (s. 5.)

No institution shall have the benefit of this statute, unless it be expressly provided, in the rules that no *treasurer*, *trustee*, or *manager*, shall profit by any deposit beyond his *actual expenses;* but allowances may be made for the salaries of other officers, and the necessary charges of management (s. 6.) But the *treasurer*, and *every* officer receiving a salary shall give security for the faithful discharge of his trust, (s. 7).

The property and effects of the institution are legally vested in the *trustees*, who are empowered to take legal proceedings in their own names; (s. 8.)—and no trustee or manager is personally liable, except for his own conduct; nor for any matter whatever, except where guilty of wilful neglect, or positive default (s. 9.)

Those who are entrusted with money, books, paper, or any property or effects of the institution, shall surrender them on the order of not less than *two* trustees and *three* managers; or on the order of a general meeting of trustees or managers (s. 10.)

The trustees of savings banks are to invest all monies in the banks of England or Ireland, and in no other security; all sums so invested to be placed to the account of the commissioners for the reduction of the national debt, and not to be less at any one deposit than £50; and an order of two trustees to that effect must be produced before any such investment, (s. 11.) But this does not prevent trustees receiving money to be applied in any other manner, according to the wishes of the depositors, and the rules of the society (s. 13.)

Central savings banks may receive and invest the money of branch banks (s. 13.

Making false declarations to obtain receipts from the commissioners is punishable with forfeiture of the sum deposited (s. 14.)

Monies paid on account of savings banks is to be invested in bank annuities, or exchequer bills (s. 51.)

From the 20th of November, 1828, the interest of three-pence per day, payable on the receipts previously isssued to the trustees by the commissioners, ceased; and since that time, the receipts so issued have carried interest at the rate of *two-pence halfpenny* per cent. per day, and the same rate of interest has been, and is now paid upon all following investments (s. 16.)

The interest due on the sum mentioned in the receipt is calculated half-yearly up to the 20th of November, and the 20th of May, and then carried to the amount of the savings

bank as principal; but no interest is allowed for any fractional part of a pound. And all interest arising to depositors may be calculated *yearly*, or *twice a year*, and carried to their credit as principal money, which in future is to bear interest (s. 17.)

Before withdrawing any money from investment, *two* or more of the trustees must sign an appointment attested by two managers, authorising some agent to receive the sum to be withdrawn, and this appointment must be deposited with the commissioners; but may be revoked, and others granted, signed, &c. in the same way. The trustees may thus draw for the whole, or part of the sum placed to their account, by drafts on the commissioners, which drafts, being indorsed by their officer within *five* days, and the interest added thereto, will be paid by the cashier of the Bank of England. When the sum exceeds £5000, the draft must be signed by *four* trustees; and the signature of each must be separately attested by at least one manager, or some other credible person; drafts for £10,000 by the trustees of a savings bank or a friendly society, are not to be paid until *fourteen* days after the date:—and officers are not to issue in *one* day orders for a greater sum than £10,000 to the account of any one savings bank, or friendly society. The trustees in person may receive payment of the draughts instead of their appointed agents, (s. 18, 19, 20, 21.)

Where the property of any savings bank has increased by the interest received beyond the rate of interest payable to the depositors by the regulations of the bank, the trustees, after deducting the expenses, shall within six months after the 20th of November in each year, pay over to the commissioners the amount of such increased property, and the amount of such surplus shall be discharged from the account of the bank, the commissioners keeping a separate account of the same, and applying it as other monies under the act; but the whole, or any part of such surplus shall remain subject to the claim of the trustees for the purposes of the institution (s. 23.) And from November 20, 1828, the rate of interest payable to depositors was not to exceed the rate of *two-pence farthing* per cent. per day (s. 24.)

Deposits may be received for the benefit of any person *under* the age of twenty-one; and the depositor receive his share and interest in the funds of the institution, as if he were of age (s. 25.) And where deposits are made by *married women*, without notice that they are married, or

when women marry after they have made deposits, the trustees may pay the money in respect of such deposits, to such women, unless the husbands give notice to the trustees of such marriage, and require payment to be made to them (s. 26.)

After November 20, 1828, charitable societies for the benefit of the poor, may invest sums not exceeding £100 per annum, or £300 in the whole, in any savings bank (s. 27.) And *friendly* societies, with the consent of the trustees, may subscribe *any portion* of their funds into savings banks; but friendly societies formed and enrolled after the passing of this Act, shall not have more than £300, principal and interest, in any savings bank (s. 28.)

The receipts of the treasurer, or other officer of such societies, are deemed a sufficient discharge (s. 29.); and members of friendly societies are not liable to any penalties or disabilities for subscribing to a savings bank (s. 30.)

No person shall pay money into a savings bank, by ticket, number, or otherwise, without disclosing his name, business, and residence, which shall be entered in the books (s. 32.); but trustees may subscribe on behalf of others, (s. 33.)

Subscribers to one savings bank *shall not* subscribe to any other, nor open a new account in the same bank. A declaration to this effect shall be made at the first subscription, and persons violating this regulation *shall forfeit their deposits* (s. 34.)

After November 20, 1828, the trustees are not to receive from any depositor more than £30 in any one year, nor more than £150 in whole; and when the principal and interest of a depositor amount to £200, the *interest shall cease* (s. 35.) This does not affect deposits amounting to £200 at the passing of this Act (s. 36.); but trustees are not to receive any additional deposit from persons whose deposit amounts to £150 (s. 37); and depositors might withdraw their deposits, and again subscribe, provided they did not exceed £30 in any one year (s. 38.); and the *whole* deposit may be any time transferred from one savings bank to another, on the depositor receiving a certificate from the trustees (s. 39.)

If depositors die, leaving a deposit exceeding £50, it shall not be paid until after administration, and the production, on the part of the person claiming to administer, of the certificate of the amount in the bank; but no duty is to be paid on probate or legacy, where the property of the depositor does not exceed £50 (s. 40.)

Administration bonds, &c. for deposits under £50, are

exempt from duty; and where the deposit of an *intestate* does not exceed £50, it may be distributed according to the rules of the institution, and if there be none applicable to the case, then, according to the Statute of Distributions (s. 41.)

Payments to persons appearing to be next of kin are valid (s. 42.) as also payments under probate (s. 43.)

Powers of attorney given by trustees or depositors, are not liable to any stamp duty (s. 44.)

Disputes may be referred to two arbitrators, and, where they cannot agree, shall be determined by *the barrister* appointed by the commissioners of the national debt, who will also award who is to pay his fee of one guinea (s. 45.)

The trustees must make an account of their funds and expenses, annually, up to the 20th of November, and transmit it, within *six* weeks, to the commissioners aforesaid; in default of which, the commissioners may close the account with the savings bank (s. 46.) And a duplicate of such account shall be fixed in a conspicuous part of the institution, for the information of the depositors, who may have a *printed copy* of such annual statement on payment of one penny (s. 47.) And the commissioners must lay accounts annually before parliament of the funds received by them on account of all the savings banks and benefit societies in England and Ireland (s. 48.)

The interest payable to depositors shall be computed to May 20, or November 20, half yearly or yearly (s. 49.)

The sections from 50 to 60 relate to the purchase of exchequer bills by the commissioners, and to their accounts with the treasury, with which the general reader has little if anything to do.

The commissioners are then authorised to appoint a barrister, and other officers necessary to carry the enactments into effect; and, lastly, the Act is extended to all savings banks, established, or to be established, in England and Ireland.

And by cap. 14, 3 & 4 W.IV. trustees of savings banks may receive money for the purchase of *annuities* on the life of any nominee above *fifteen* years of age, such annuities not to exceed twenty pounds per annum.

By this Act, also, so much as in the preceding relates to withdrawing deposits, and re-depositing, so that the sum re-invested does not exceed thirty-pounds additional principal money, is repealed; and, from November 20, 18 3, not more than thirty pounds in all can be invested by any one depositor, in any following year ending on the 20th of November in each year.

FRIENDLY SOCIETIES.

The statute 10 George IV. c. 56 consolidates all the existing provisions with respect to benefit societies. By this Act, s. 2, any number of persons may form themselves into a society, and raise a fund for their mutual benefit, and the majority are empowered to make such rules as shall not be repugnant to the laws of the land, or the regulations of this statute; with authority to impose reasonable fines and forfeitures upon those who infringe the regulations, such fines to be used to the benefit of the society, as the rules may direct; with the power to alter, amend, or annul such regulations, as occasion may require, under the restrictions of this Act.*

The purpose of the establishment must be fully and explicitly declared in the rules of such societies; and the uses and purposes of the contributions clearly expressed; such rules to be complied with and enforced during their continuation; and the contributions in no way to be diverted or misapplied by any officer or member, under a penalty to be inflicted for such offence (s. 3.)

The rules, &c. are to be fairly written out, and signed by three members, countersigned by the clerk or secretary, as soon as may be after they are originally made, or afterwards altered in any respect, and submitted to the barrister appointed for the time being for England, Wales, and Berwick-upon-Tweed; or to the lord-advocate, or any of his deputies, in Scotland; or to such barrister as may be appointed in Ireland; who is to certify, in writing, that the rules are conformable to the law, or point out in what they are repugnant thereto, for which he is entitled to the fee of one guinea, to be paid, with

* The society, however, must be actually for the purposes mentioned in this Act; namely, the charitable relief and maintenance of the old, sick, &c. members and their families. And *trade associations*, which, though ostensibly friendly societies, having apparently a tendency to encourage *particular combinations*, would not be entitled to the protection of the statute.

the expense of carriage, &c., by the society. The rules, with the certificate, must then be deposited with the clerk of the peace, to be laid, for confirmation, before the justices of the peace at the general quarter sessions, or any adjournment thereof. The rules are then to be filed by the clerk of the peace, who is to return to the society, within fourteen days, a certificate of the enrolment, without fee or reward.* (s. 4.)

If the revising barrister, &c. refuse to certify, the society may still submit the rules to the quarter sessions, with the reasons assigned for the refusal: and the justices may allow the rules, &c. if they think fit notwithstanding such refusal (s. 5); but they are not to be allowed unless the justices are satisfied with the tables of allowance, &c. (s. 6.)

No society is entitled to the benefit of this Act, unless the rules, &c. have been confirmed (s. 7.); the rules are binding upon the members and depositors, as soon as they are entered and deposited; and the copy of the transcript of the rules sent to the sessions, is to be received in evidence; which copy must be furnished by the clerk of the peace without any other fee than the expense of making such copy; and no *certiorari*, or other process, is allowed to remove any such rules into any superior court (s. 8.)

No confirmed rule to be altered or repealed, except at a general meeting of the society, convened by public notice, written or printed, and signed by the secretary, president, or other principal officer or clerk of such society, in pursuance of a requisition by seven or more of the members of such society, which requisition and notice shall be publicly read at the two usual meetings of such society, held next before a such general meeting for the alteration, &c. *unless* a *committee* of such members shall have been nominated for that purpose at a general meeting convened as aforesaid, in which case the committee may make such alterations; *and unless* such alterations, &c. shall be made with the concurrence of *three-fourths* of the members present, or the *like proportion* of the committee, when nominated for that purpose (s. 9.)

The rules must specify the place of meeting and the duties at large of the officers, committees, and members;

* The rules, &c. need not be submitted to the barrister, &c. if the transcript sent to the clerk of the peace be accompanied by an affidavit that the rules, &c. are a *copy* of the rules, &c. of any *other society* which has been enrolled in the same county, under the provisions of this Act.

but the place of meeting may be altered to any other place within the county, &c. by the majority, on giving seven days' notice before or after removal, and signed by the secretary or principal officer, and three other members, to the clerk of the peace (s. 10.)

The society may appoint a steward, warden, treasurer,* or trustee, at any usual meeting, or by their committee; and such other clerk or officers as may be necessary, for the time and purposes specified in the rules; such treasurer, or other officer concerned in the receipt or payment of money, to give security, if required, to the clerk of the peace, by a bond, in the following terms, *viz.*

"KNOW ALL MEN by these presents, that we, A. B. of , treasurer, [*or* trustee, &c.] of the society established at , in the county of , and C. D. of , and G. H. of , (as sureties on behalf of the said A. B.) are jointly and severally held and firmly bound to E. F. the present clerk of the peace [*or* town clerk] for the county [*or* county of a city, *or* county of a town, riding, division, or place, *as the case may be,*] of , in the sum of , to be paid to the said E. F. as such clerk of the peace [*or* town clerk] or his successor, clerk of the peace [*or* town clerk] of the said county, [*or* county of a city, &c.] for the time being, or his certain attorney, for which payment well and truly to be made, we jointly and severally bind ourselves, and each of us by himself, our heirs, executors, and administrators, firmly by these presents, sealed with our seals, and dated the day of in the year of our Lord, 183 .

"Whereas the above bounden A. B. hath been duly appointed treasurer [*or* trustee, &c.] of the society established as aforesaid, and he, together with the above-bounden C. D. and G. H. as his sureties have entered into the above-written bond, subject to the condition hereinafter contained; now, therefore, the condition of the above-written bond is such, that if the said A. B. shall and do justly and faithfully execute his office of treasurer [*or* trustee] of the said society, established as aforesaid, and shall and do render a just and true account of all monies received and paid by him; and shall and do pay over all the monies remaining in his hands,

* The treasurer must not only be *appointed*, but must have *accepted* the office, to be treasurer within the meaning of the Act. And *two* persons may be appointed, if thought necessary.

and assign and transfer and deliver all securities and effects, books, papers, and property of or belonging to the said society in his hands or custody, to such person or persons as the said society shall appoint, according to the rules of the said society, together with the proper or legal receipts or vouchers for such payments, and likewise shall and do in all respects well and truly and faithfully perform and fulfil his office of treasurer [*or* trustee, &c.] to the said society, according to the rules thereof, then the above-written bond shall be void and of no effect, otherwise it shall be and remain in full force and virtue."

The society may sue upon this bond * in the name of the clerk of the peace, (holding him harmless for the costs:) and, in Scotland, this form of bond (s. 11.) has the same effect as bonds in use in Scotland.

Societies may appoint committees of any number *mentioned in the rules*, and delegate to such committees the powers of this Act, for a time to be specified; but the powers of such committee must be stated in the rules. And where a committee is appointed for any particular purpose, the powers delegated to such particular committee must be entered in a book kept by the secretary or clerk; a majority of such committee must concur in every act; and then the proceedings of the committee shall have the like force and effect as the acts, &c. of a general meeting; but the proceedings of such committee are subject to such review and control, &c. of the society, as shall be directed by the rules (s. 12.)

The treasurer, &c. with the consent of the society, is to lay out surplus contributions in sufficient securities, and bring the proceeds to account, as the rules may direct, (s. 13.) to render accounts, and pay over balances when required; and in case of neglect or refusal, on the part of the said treasurer, &c. his executors, administrators, or assigns, so to account for monies, books, &c. belonging to the society, such society, in the name of its treasurer, trustee, or principal officer, may exhibit a petition in the Court of Exchequer in England or Ireland, or in the Court of Session in Scotland, or the Courts of Great Sessions in Wales, who shall proceed in a summary way, and make such order therein, after hearing all parties, as may seem just, which order shall be final and conclusive; and all assignments, sales, and transfers made in pursuance of

* Societies should be careful that the penalty of the bond is sufficient to cover the amount in the hands of the treasurer, &c.

such order, shall be good and effectual in law to all intents and purposes (s. 14.)—And where such trustees, &c. are out of the jurisdiction of the court, or if it be uncertain whether they are alive, or if they have refused, or have become insolvent, bankrupt, of unsound mind, &c. the Court of Exchequer may appoint a person to convey, &c. (s. 15)—and in such cases, also, the Court may order stock to be transferred, dividends to be paid to any other trustee, &c. whom the society may appoint (s. 16.)

No fee or reward is to be taken or demanded in such courts for any thing done in pursuance of this Act; and upon presenting any such petition the judges of the Court may assign counsel, and appoint any clerk or practitioner in the court to advise and carry on such petition on behalf of such society, who are required also to do their duty without fee or reward (s. 17.)

In cases of transfers of stocks, &c. the secretary, deputy-secretary, or accountant-general of the Bank of England, must be named in the order, except where one or more trustees shall be ordered to transfer, &c. without the concurrence of any other (s. 18.); and the Act indemnifies the Bank for any thing done under its provisions (19.)

Executors, &c. of trustees, &c. must pay money due to such societies, before the payment of any other debts; but this refers only to money lodged in the hands of the trustees, &c. officially; and not sums that may have been lent to their officers, or to any other person, by the society, upon special contract, as a promissory note, &c. though the mere taking of such a security *subsequently* for money received officially, when no money could be obtained from such officers, might not destroy the preference to which the society is entitled by this Act (s. 20.)

The effects of societies, of every description, shall be vested in the trustees, or treasurers, for the time being, who may sue and be sued, plead and be impleaded, in all cases concerning the property, right, or claim of such society, in their own name, as trustees, &c. without other description; and no suit, action, &c shall abate by the death or removal of such trustees, &c. but may be proceeded in by any succeeding trustees, &c. in the name of the person commencing the same; and such successor shall pay and receive like costs, as if the action, &c. had commenced in his name, for the benefit of, or to be reimbursed from, the funds of the society (s. 21.)*

* But to enable a treasurer, &c. to sue, the old as well as the new

The trustees, &c. are *not* responsible for any deficiency of the funds of the society, unless they have declared themselves in writing, willing to be answerable, such engagement to be registered and deposited with the rules; and they may in such engagement limit the amount to which they will become responsible; but under all circumstances they are personally responsible for all monies actually received on account of the society (s. 22.)

Payments on account of deceased members to persons who appear to the trustees, &c. at the time of payment to be entitled to the money paid, are valid and effectual against the claims of any other person, as next of kin, or legal representative of the deceased member; but such persons have their remedy against those who may have received such money (s. 23.)

Where members entitled to any sum not exceeding £20 die intestate, and no letters of administration to his effects are taken out, the trustees may pay the same at any time, according to the rules, &c.; and if there are no applicable regulations, they may divide the sum among the parties entitled to the effects of the deceased, without administration in England and Ireland, and without confirmation in Scotland (s. 24.)

Officers, members, or any other persons, fraudulently obtaining possession, or keeping possession of any money belonging to such societies, may be summoned before one justice of the peace within the county, on the oath or affirmation of any officer of the society; and on appearance or default of appearance, the case may be heard upon oath before two justices, according to the rules of the society; and upon due proof of fraud, shall be convicted in double the amount of the sum fraudulently obtained, or withheld, to be repaid to the society, with such costs as have been incurred, not exceeding ten shillings; and in default of payment, the amount may be levied by distress on the goods and chattels of the parties, returning the overplus (if any) after payment of all expenses; and where no sufficient distress can be obtained, the parties may be committed to *hard labour*, for any time not exceeding *three months*. The society in such case may proceed, if they think fit, by indictment, in the first instance, but not after a conviction under this statute (s. 25.)

regulations (if there be both), under which he has been elected, must be duly confirmed. He may, however, recover on a bond, or note of hand, at common law, where he might not on the statute.

It is *not* lawful for any society to dissolve or determine its existence by any rule, or at any general meeting, while the declared intents and purposes remain to be carried into effect, without the consenting votes of *five-sixths* in value of *the then existing members* of such society; and the *consent of all persons then receiving*, or then *entitled to receive relief from such society*, either on account of sickness, age, or infirmity, *to be testified under their hands individually and respectively*;—and for the purpose of ascertaining the votes of such *five-sixths* in value, *every member* shall be entitled to *one vote;* and to an *additional vote*, for *every five years* that he may have been a member, but *no* member to have *more* than *five votes* in the whole. And in all cases of dissolution, the intended appropriation and division of the *funds*, or *other property*, shall be *fairly and distinctly stated* in the proposed plan of dissolution, *before* any such consent is given. The stock, &c. can only be divided for the general purposes of the society by the existing rules;—and all dissolutions, without the required consent, and all such distribution for other purposes, are void and of no effect; and the trustees, or other officers, or persons aiding and abetting therein, are *liable to the penalties of* s. 25, *as in cases of fraud.*

The rules of the society are to direct whether disputes between the society, or its agents, and individual members, or persons claiming on account of members, shall be referred to his majesty's justices of the peace for the county, &c. *or* to *arbitrators*. And if such disputes are to be referred to *arbitration*, "certain arbitrators shall be named and elected at the *first meeting* of such society, or general committee thereof, that shall be held after the enrolment of its rules, none of the said arbitrators being beneficially interested, directly or indirectly, in the funds of the said society; of *these arbitrators* a certain number, not less than three, shall be chosen by ballot in each such case of dispute, the *number* of such arbitrators and the *mode of ballot* being determined by the rules of each society respectively. The *names* of such arbitrators shall be duly entered in the book of the said society, in which the rules are entered; and in case of the death, or refusal, or neglect, of any or all of the said arbitrators to act, it shall and may be lawful to, and for the said society, or general committee thereof, and they are hereby required at their next meeting, to name and elect one or more arbitrators as aforesaid, to act in the place of the said arbitrators, &c. dying, refusing, or neglecting to act:—And *whatever award* shall

be made by the said arbitrators, or the major part of them, *according to the true purport and meaning of the rules of such society*, confirmed by the justices according to the directions of this Act," shall be according to the following form, *viz* :—

"We, the major part of the arbitrators duly appointed by the society established at , in the county of , do hereby award and order that A. B. [*specifying by name the* party *or the* officer *of the society*] do, on the day of , pay to C. D. the sum of , [*or* we do hereby reinstate in, *or* expel A. B. from the said society, *as the case may be.*] Dated this day of , 18

Signed { J. B. R. S."

The decision, when referred to arbitration, "shall be *final*, to all intents and purposes, without appeal, or being subject to the control of one or more justices of the peace, and shall not be removed nor removable into any court of law, or restrained or restrainable by the injunction of any court of equity;—and should either of the said parties in dispute refuse or neglect to comply with, or conform to, the decision of the said arbitrators, or the major part of them," any justice within the county, on sufficient proof of such award being made, and the refusal or neglect as aforesaid, on the complaint of the party aggrieved, may summon the offending parties before any two justices; and upon appearance, or in default of appearing, upon due proof of the service of such summons, shall proceed to make such *order* as the said two justices shall think fit. And if any sum of money so awarded, with any sum not exceeding *ten shillings* for costs, shall not be immediately paid, the justices may proceed to levy by warrant of distress, &c. on the goods of the party, or of the society, as the case may be, as in s. 25, provided that the sum so enforced against any officer shall be repaid, with all damages, by the society, (s. 27.)

If the rules, &c. direct that any matter in dispute shall be decided by justices of the peace, any justice, on complaint to him of any refusal or neglect to comply with the rules of the society, may summon the person against whom the complaint is made, to appear before any two justices at a time and place named; and on such appearance, or in default of appearing, upon due proof of service of the

summons, the two justices may hear and determine the complaint according to the rules of the society; and if they adjudge any sum of money to be paid by the person against whom the complaint is made, and if such person shall not pay the same, it may be recovered by distress, &c. as in the last paragraph, and s. 25, (s. 28.)

"Every sentence, order, and adjudication of any justices under this Act, shall be *final* and conclusive, to all intents and purposes, and shall not be subject to any appeal; and shall not be removed, or removable, into any court of law, or restrained or restrainable by the injunction of any court of equity; and that no suspension, advocation, or reduction, shall be competent." (s. 29.)

These societies may subscribe *the whole* or *any part* of their funds, into the funds of any institution which shall have taken the benefit of the act "*to consolidate and amend the laws relating to Savings Banks*," subject to the provisions of the previous act, "relating to Benefit Societies," (s. 30.) Or such societies may pay directly into the Bank of England, any sum not less than £50, to the account of the commissioners for the reduction of the national debt, upon the declaration of two or more of the trustees, &c. that the money belongs exclusively to the society; and the cashiers of the bank will receive and place such monies to the account of the said commissioners, in the book denominated "The Fund for the Friendly Societies;" but if any such declaration shall not be true, the money will be forfeited to the said commissioners; and all the provisions of 9 Geo. IV, entitled "*An Act to consolidate and amend the Laws relating to Savings Banks*," with respect to the accounts of banks for saving, and the regulation of receipts, certificates, or orders concerning the same, shall be applicable to the monies so paid into the Bank of England, under the authority of this act; provided that every society, formed and enrolled previously to July 28, 1828, under 59, Geo. III. shall, on paying money directly into the bank, be entitled to receipts bearing interest at three pence per cent. per day, and provided that no society which has invested, or may invest any money with the said commissioners, shall be entitled to *re-deposit* any sum without the consent of the commissioners, or by the comptroller, or deputy-comptroller-general, on their behalf (s. 31.)

Minors may become members of such societies, and are empowered to execute all instruments, give necessary acquittances, and enjoy all the privileges, and be liable to

all the responsibilities of members of full age, provided such minors be admitted by and with the consent of their parents, masters, or guardians (s. 32.)

The rules of every society must provide that some officer shall, once at least in every year, cause to be prepared a general statement of the funds and effects belonging to such society, specifying in whose possession such funds, &c. are then remaining, with an account of all sums of money received and expended by and on account of the said society, since the publication of the preceding periodical statement; and such account shall be attested by two or more members, who shall be appointed auditors for that purpose, and countersigned by the secretary or clerk; and every member shall be entitled to a copy of this account, on payment of any sum directed by the rules, but not exceeding *sixpence*.

Every society established under this act, within three months after the expiration of the month of December, 1835; and again, within three months after the expiration of every further period of five years, shall transmit to the clerk of the peace for the county wherein such society is held, a return of the rate of sickness and mortality experienced by the society within the before-mentioned period of five years, according to the following form;* a copy of which must be annexed to the rules of each society (s. 34.)

* In filling up the columns of the following table it is very desirable that the secretaries, &c. who are employed, should be as exact as possible, the object of the legislature being in the end to obtain the most accurate information upon which the tables of allowances and subscriptions may be calculated with such precision as to prevent the misery and distress which have attended the breaking up of so many societies, on account of absurd promises of advantages too high to be ever realized for any length of time. Even now the calculations are necessarily imperfect, though much labour and ingenuity have been employed to regulate them as nearly as possible to the means and necessities of the respective associations. And this is the more essential with old societies, the younger members of which, on finding or expecting any deficiency of the funds, are sometimes induced to have recourse to the most shameful means of getting rid of aged and infirm members; who, after paying their contributions for years, find themselves at last left entirely destitute, or their expected dependence reduced to a miserable pittance, upon which it is impossible to support existence. This is bad enough when the funds of a society are so depressed as to afford some reason for thus defeating the natural hope of a long life of anxiety to keep up the requisite payment; but it is still worse when, as we have seen in many cases, the aged contributors are expelled under the most fraudulent and despicable pretences, for the sole purpose of defrauding them of their legal rights.

List of the Members of the Society, held at ; with a Return of the Sickness and Mortality experienced therein for the period of Five Years. commencing Jan. 1, 183 , and ending Dec. 31, 183 .

Names.	Trade or profession.	Date of birth.	Date of admission to the society.	Date of becoming a free member.	For what time entitled to relief on account of sickness.										For what time entitled to relief on account of superannuation.										Date of death.	Place of residence at time of death.	Remarks.
					In 183 .		In 183 .		In 183 .		In 183 .		In 183 .		In 183 .		In 183 .		In 183 .		In 183 .		In 183 .				
					weeks.	days.	weeks.	days.	weeks.	days.	weeks.	days.	weeks.	days.	weeks	days.	weeks.	days.	weeks.	days.	weeks.	days.	weeks.	days.			
This column may be filled up with initials only.																											

The clerks of the peace, within one month after the expiration of March, 1836, and again within one month of the expiration of every further period of five years, shall transmit to one of his majesty's secretaries of state, a list of the societies enrolled under this Act during such periods, specifying their names, the places where they have been established, and the date of enrolment, and the time of their ceasing to exist, if such case should arise, and also a copy of the returns of sickness and mortality; a copy of which list, with the schedule attached to it, shall be laid before both houses of parliament, within one month then next ensuing, if parliament shall be sitting, or within one month after the time when parliament shall next sit (s. 35.)

And if any society refuse or neglect to transmit the aforesaid returns as directed, the clerk of the peace shall give immediate notice to the society, that unless such return is made within twenty-one days, the society shall cease to be entitled to the privileges of this Act, unless sufficient cause be shewn to the justices at the next general or quarter sessions why such returns could not be made (s. 36.)

All bonds, and other documents, required for transacting the business of such societies are *exempt from stamp duties* (s. 37.)

This act extends to all friendly societies hereafter to be established, and to all societies already established, as soon as they conform to its provisions, within the time prescribed, which has been extended to July, 1834, and will probably be farther enlarged.

This Act is to be deemed a public Act, and be judicially taken notice of by all judges, &c. without being specially pleaded.

In proceedings before the magistrates under this Act, it is necessary to be very exact in the *forms* that are required for informations, &c. as any failure of technicality might either prevent the case from being heard in the first instance, or defeat any proceedings that might afterwards become necessary. We shall therefore give some of the ordinary forms, from which others may be easily drawn, according to the particular circumstances.

Form of Complaint to be exhibited by a Member of a Benefit Club, in case of unjust Expulsion.

To Wit. } Be it remembered, that on the day of in the year of our sovereign lord William the Fourth, now king of the United Kingdom of Great Britain and Ireland, at in the county of J. G. of the parish of in the county aforesaid, inkeeper, in his proper person cometh before us, K. L. and N. O. esquires, two of the justices of our said lord the king, assigned to keep the peace of our said lord the king within the said county of and also to hear and determine divers felonies, trespasses, and other misdemeanors within the said county committed, and on his corporal oath giveth us the said justices to understand and be informed that he the said J. G. being a member of the friendly society called held at the sign of the at aforesaid, in the county aforesaid, the rules, orders, and regulations of which said society have been exhibited in writing to the justices of our said lord the king, assigned to keep the peace of our said lord the king within the said county of at the general quarter sessions of the peace holden at in and for the said county, and by the said justices at their said sessions, after due examination, allowed and confirmed and afterwards signed by the clerk of the peace at the said sessions, pursuant to the statute in that case made and provided, was, at a meeting of the said society, on the day of in the year aforesaid, at the sign of the at aforesaid, in the county aforesaid, unjustly and without sufficient cause, and contrary to the true purport and meaning of the said rules, orders, and regulations, by the members of the said society then and there present, excluded from the said society, and from all benefit and advantage arising therefrom. And hereupon the said J. G. prayeth of us, the said justices, that justice may be done to him in the premises; and the said J. G., on his oath aforesaid, further saith, that F. S. of and S. T. of both of the said county of are of the said society.

Sworn before us, { K. L. / N. O. }

this day of Signed J. G.

Form of Summons on the above Complaint

———— } To the Constable of
To Wit. }

Forasmuch as J. G. of the parish of in the county of , innkeeper, has this day made information and complaint upon oath before us, K. L. and N. O.. esquires, two of the justices of our sovereign lord the king, assigned to keep the peace of our said lord the king, within the said county of and also to hear and determine divers felonies, trespasses, and other misdemeanours within the said county committed, that he the said J. G. being a member of the society of held at the sign of at in the parish of in the county of the rules, orders, and regulations of which said society have been exhibited in writing to the justices of our said lord the king, assigned to keep the peace of our said lord the king, within the said county of at the general quarter sessions of the peace holden in and for the said county, and by the said justices, at their said sessions, after due examination, allowed and confirmed, and afterwards signed by the clerk of the peace at the said sessions, pursuant to the statute in that case made and provided, was at a meeting of the said society on the day o. . in the year aforesaid, at aforesaid, in the county aforesaid, unjustly, and without sufficient cause, and contrary to the true purport and meaning of the said rules, orders, and regulations, by the members of the said society then and there present, excluded from the said society, and from all the benefit and advantage arising therefrom : and thereupon the said J. G. hath prayed us that justice may be done in the premises.

These are therefore to require you the said constable to summon F. S. and S. T. two of the of the said society, and every of them, to appear before us the said justices at aforesaid, in the county aforesaid, on the day of at the hour of in the forenoon, to answer to the said complaint, and further to do and receive what to law doth appertain. And you are likewise to give notice to the said F. S. and S. T. that they do produce before us the said justices, at the time and place last mentioned, the rules, orders, and regulations of the said society, allowed and confirmed by the justices of the peace at the general quarter sessions of the peace holden in and for the said county of and

signed by the clerk of the peace at the said sessions, and also the books and papers if any such there be, wherein the proceedings of the said society are entered. And be you then there to certify what you have done in the execution of this precept. Hereof fail not, as you will answer at your peril. Given under our hands and seals the day of in the year of our Lord one thousand eight hundred and

Signed { K. L. / N. O.*

Form of an Order for Re-admission

——— } To the Stewards and Members of the Friendly
To Wit. } Society called , holden at in the parish of in the county of

Whereas I. G., of the parish of in the county of innkeeper, in his proper person, on the day of in the year of the reign of our sovereign lord, William the Fourth, by the grace of God of the United kingdom of Great Britain and Ireland, King, Defender of the Faith, at aforesaid, in the county aforesaid, made an information and complaint upon oath before us, K. L. and N. O., esquires, two of the justices of our said lord the king, assigned to keep the peace of our said lord the king within the said county of , and also to hear and determine divers felonies, trespasses, and other misdemeanors within the said county committed, whose names are hereunto set, and seals affixed, and residing at aforesaid, where the said society was established, and which oath we, the justices, did then and there administer to him, by which said information and complaint on oath aforesaid the said J. G. deposed, and said, that he, the said J. G., then was a member of a certain Friendly Society called held at the sign of situate in aforesaid, the rules, orders, and regulations of which said society had been exhibited in writing to the justices of our said lord the king assigned to keep the peace of our said lord the king within the said county of at the general quarter sessions of the peace holden in and for the said county, and by the said justices at their said sessions after due examination allowed and confirmed, and afterwards signed by the clerk of the peace at the said sessions, pursuant

* *One* justice may receive the complaint, and issue the summons; but it requires *two* justices to hear the complaint, and make an order upon it.

to the statute in that case made and provided. And that he, the said J. G., had been a member of the said society for the space of years and upwards, and that he had then for years then past, or thereabouts, been lame, and thereby rendered incapable of working at his calling, that he did then continue so, and that he had, during the time he was so lame, received the allowance from the said society until the month of then and now last on the club night of which month the members of the said society refused to pay him any further allowance, declined accepting his contribution-money, and unjustly excluded him from the said society, and thereupon he prayed that justice might be done him in the premises. And whereas, on the day of in the year aforesaid, at aforesaid, in the county aforesaid, F. S. and S. T., two of the said society, pursuant to our summons issued for that purpose, and also J. M., a member of the said society, appeared before us, K. L. and N. O., being such justices as aforesaid, and the said J. G. being then and there present, we, the justices aforesaid, did there and then proceed to hear and determine the matter of the said complaint according to the true purport and meaning of the rules, orders, and regulations of such society confirmed by the justices according to the directions of the statute. And thereupon we do order and adjudge, by virtue of the said statute, that the said J. G. be readmitted into the said society, and into all the benefits and advantages arising therefrom; and we do order and require you, the stewards and members of the said society, to readmit the said J. G. into the said society, and into all the benefits and advantages arising therefrom accordingly. Given under our hands and seals at aforesaid, in the county aforesaid, the day of in the said year of the reign of our sovereign lord William the Fourth, by the grace of God of the United Kingdom of Great Britain and Ireland, King, Defender of the Faith, and in the year of our Lord one thousand eight hundred and

Signed { K. L. / N. O.

NEW FRIENDLY SOCIETIES' ACT.

By the 4th and 5th of William IV. c. 40, sections 6, 20, 30, 10 George IV. c. 56, are *repealed*;* as also that part of s. 34, as enacts, that the funds of any friendly society may be subscribed into a savings bank;—and those parts of s. 35 and 36 which require the returns of the rate of sickness and mortality to be made to the clerk of the peace, or which require clerks of the peace to transmit such returns to the secretary of state; or which provides that a friendly society refusing or neglecting to make such returns, should cease to be entitled to the privileges of the said act.

The new statute also enacts, s. 2, that friendly societies may be formed "for *any purpose* which is *not illegal*," provided, that when the rules of any society provide for relief in any *other case* than that of *sickness, infancy, advanced age,* widowhood, or other natural state or contingency, whereof the occurrence is susceptible of calculation by way of average, the *contributions* for such *other* purpose shall be kept *separate* and *distinct*, or the charges of such other purposes be defrayed by *extra* subscription of the members at the time such contingencies take place.

By s. 3 of the new act, s. 4 of the 10th George IV. c. 56 is repealed; and so much of s. 5, as relates to alterations of the rules being certified by the clerk of the peace, and that no rule, or alteration, or amendment, should be binding until confirmed by the justices, and filed under the said act, *are repealed*;—while by s. 4, it is enacted that two transcripts on paper or parchment of all rules made in pursuance of the said acts, signed by three members, and countersigned by the clerk or secretary (accompanied, in the case of an *alteration* or *amendment* of rules, with an affidavit of the clerk or secretary, or one of the officers of the said society, that the provisions of the said act of 10 George IV. c. 56, or of the act under which the rules of the said society may have been enrolled, have been duly complied with) with all convenient speed after the same shall be made, altered, or amended, and so from time to time after every making, altering, or amending thereof, shall be submitted in *England*, and *Wales*, and *Berwick-upon-Tweed*, to the barrister at law for the time

* Of course they are only repealed from the passing of the new act, and are therefore necessary to be retained in the recapitulation of the previous statute, as in force up to that period, viz. July 30, 1834.

being appointed to certify the rules of savings banks; and in *Scotland*, to the Lord Advocate, or any deputy appointed by him for that purpose; and in *Ireland*, to such barrister as may be appointed by his Majesty's Attorney General in Ireland, for the purpose of ascertaining whether the rules of such society, or alteration or amendment thereof, are calculated to carry into effect the intention of the parties framing such rules, alterations, or amendments, and are in conformity to law, and the provisions of the said recited act, or this act; and that the said barrister or advocate shall advise with the said clerk or secretary, if required, and shall give a certificate on each of the said transcripts, that the same are in conformity to law, and to the provisions of the said recited act and this act, or point out in what part or parts the said rules are repugnant thereto, for the fee of one guinea to such barrister, &c. And one of such transcripts, when certified by the barrister, &c. shall be returned to the society, and the other transmitted by such barrister, &c. to the clerk of the peace for the county where the society is formed, to be laid by him before the justices at a general quarter sessions, or adjournment thereof, held next after the transcript is transmitted, which justices are authorized and required to allow and confirm, without motion; such transcript to be filed by the clerk with the rolls of the sessions without fee or reward. And all rules, alterations, &c. to be binding on the members, officers, &c. of the society, from the time of their being certified by the said barrister, &c.

The aforesaid barrister is not entitled to any fee with respect to alterations within three years; nor for certificates to rules, which are only *copies* of those already enrolled (s. 5.)

The returns of *sickness* and *mortality*, required by 10 George IV. c. 56, are to be transmitted at the periods therein-mentioned to the barrister, &c. by whom the rules may have been certified, and by *him* are to be transmitted to the secretary of state (s. 6.)

" When the rules of any society provide for a reference to *arbitrators* of any matter in dispute, and it shall appear to any justice of the peace, on the complaint on oath of a member of any such society, or of any person claiming on account of such member, that application has been made to such society, or the steward or other officer thereof, for the purpose of having any dispute so settled by arbitration, and that such application has not been within forty days complied with, or that the arbitrators have neglected or refused to make any award, it shall and may be lawful for such justice to *summon* the trustee, treasurer, steward, or other officer of the society,

or any one of them, against whom the complaint is made; and for any *two* justices to hear and determine the matter in dispute, in the same manner as if the rules of the said society had directed that any matter in dispute as aforesaid should be decided by justices of the peace, any thing in the 10th George IV. c. 56, contained to the contrary notwithstanding (s. 7.)

And in case any member of a friendly society, established under the said recited act or this act shall have been *expelled* from such society, and the arbitrators, or the justices, as the case may be, shall award or order that he or she shall be reinstated, the arbitrators or justices may award or order, in default of such reinstatement, such sum of money to the member so expelled, as may seem just or reasonable; which sum, if not paid, shall be recoverable from the said society, or the treasurer, trustee, or other officer, in the same way as any money awarded by arbitrators is recoverable under 10 George IV. c. 56 (s. 8.)

The *whole*, or *any part* of the funds of any friendly society, may be deposited in the funds of any institution, which has taken the benefit of 9 George IV. c. 92, entitled, "An Act to consolidate and amend the laws relating to savings banks," subject to the provisions of that act contained relating to friendly societies, except those which *restrict* the *amount* allowed to be invested, *all restriction* as to the amount being *repealed;* and it is not necessary for the trustees of savings banks to enrol any alteration of the rules of their institution which may be occasioned by this clause (s. 9.)

Members of friendly societies are competent witnesses on the trial of any action, indictment, or other proceedings respecting the property of any society duly enrolled, or in any proceedings before justices of the peace on matters connected with the society (s. 10.) And no fee is to be charged to any member for any oath he may be required to make before a magistrate, to obtain payment of his sick pay or allowance (s. 11.)

Executors, &c. of officers of friendly societies are to pay all monies due to such societies, before any other debts, &c. (s. 12); and letters to and from revising barristers are to be free of postage.

The provisions of former statutes are to continue in force as to societies established under them, until they conform to the provisions of 10 Geo. IV. c. 56, as amended by this act: and if a society, enrolled under acts repealed by 10 Geo. IV. be desirous of altering their rules, they are to be so altered in conformity to the act (s. 14.)

GAME LAWS.

The New Game Act of 1 and 2 William IV. was passed on the 5th of October, 1831, and commences with the repeal of many preceding statutes, from Richard II. to George III.

It declares that the word "*game*" shall be deemed to include "*hares*, *pheasants*, *partridges*, *grouse*, *heath*, or *moor game*, *black game*, and *bustards*;" and enacts that any person killing, or using any instrument for the taking or killing game on a Sunday or Christmas Day, shall pay a penalty of not more than *five pounds*, with *costs*, on conviction before two justices:—That any person killing or taking any PARTRIDGE, between the *first* of *February* and the *first* of *September*;—or any PHEASANT, between the *first* of *February* and the *first* of *October*;—or any BLACK GAME, (except in *Somerset*, *Devon*, and the *New Forest*, *Southampton*) between the *tenth* of *December* and the *twentieth* of *August* in the succeeding year, or in the county of *Somerset*, *Devon*, and the *New Forest*, between the *tenth* of *December*, and the *first* of *September*, in the succeeding year;—or any GROUSE, commonly called RED GAME, between the *tenth* of *December* and the *twelfth* of *August*;—or any BUSTARD, between the *first* day of *March* and the *first* day of *September*;—every such person shall, on conviction before two justices, forfeit such sum of money not exceeding *twenty shillings*, for every head of game so killed or taken, as the said justices shall think fit, together with the *costs* of the conviction.* And any person, with intent to *destroy* or *injure* game, putting, or causing to be put, any poisonous ingredient on grounds open or inclosed, where game usually resort, or in any highway, shall, on conviction before two justices, be fined any sum not exceeding *ten pounds*, together with costs, which the said justices may think fit.

The possession of game is *illegal* in *dealers* in *ten* days, and in *other persons* in *forty* days, after the expiration of the season.

This Act does not alter (except as hereinafter mentioned) any law now in force requiring *annual certificates*

* *Hares* may be taken, killed, or sold, at any season of the year; the time being material only as to "*birds* of game."

for using dogs or engines, in taking or killing game, or woodcocks, snipes, landrails, or coneys; but such certificates must be taken as usual, and all the penalties, &c. for the want of them remain in full force, and apply to all gamekeepers appointed under this Act.

Persons having certificates may take and kill game; but subject always to action, or other proceedings hereafter mentioned for any *trespass* committed in pursuit or search of game.* And no certificate, for which less than three guineas and a half is chargeable, will authorise a *gamekeeper* to take or kill game, beyond *the limits* included in his appointment as gamekeeper; and if he exceed those limits, he may be proceeded against under this Act or otherwise, as if he had no game certificate at all.

In cases where land is held under any lease or agreement made before the passing of this Act, (except in cases hereinafter excepted) the lessor or landlord has the right of entering, or authorising other persons having certificates to enter such land, for the purpose of killing game:—and no person occupying land under any lease or agreement, either for life or years, made before the passing of this Act, shall have the right of killing or taking game on such land; except where such right has been expressly allowed by such lease, &c.; or except where, upon the original granting or renewal of such lease, &c. a fine has been taken, or except such lease shall have been made for a term exceeding *twenty-one* years.

This Act does not affect any *existing* or *future* agreements respecting game, nor any rights of manor, forest, chase, or warren;—nor does it affect any of his Majesty's forest rights, &c. nor any cattle-gates, or right of common.

Landlords having the game may authorise other persons to kill it, &c.;—and where the landlord has the right, in exclusion of the occupier, the occupier is subject to a penalty for killing it.

Lords of manors may appoint gamekeepers, and authorise them, within their limits, to seize dogs, engines, &c., used within such limits by unauthorized persons. But persons

* Killing game without a certificate subjects the offender to a penalty of 20*l*. besides the full duty of 3*l*. 13*s*. 6*d*. But certificates are not necessary to kill snipes, quails, landrails, woodcocks, or rabbits, except woodcocks and snipes with nets, &c. or rabbits by the proprietor in an enclosed ground. Collectors of taxes, gamekeepers, landlords, occupiers, and lessees of grounds, are authorised to demand the certificates of sportsmen, and may also take copies of them; and if not produced on demand, they may require the name and residence of the parties, and where the certificate was taken out; and a refusal, or giving any false information, incurs a penalty of 20*l*.

without a certificate by 54 G. III. c. 141, may assist by beating the bushes, &c. a certificated sportsman, who does not sport by virtue of a deputation, and who uses his own dog and gun.

Lords of manors may grant deputations, and all appointments of gamekeepers are to be registered with the clerk of the peace.

Persons having obtained annual game certificates, may sell game to persons licensed to deal in game, under the provisions hereinafter mentioned; but no certificate on which less than three guineas and a half is chargeable, can authorise any *gamekeeper* to sell any game, except on account, and with the written authority, of his master; and any gamekeeper so selling game without a written authority, may be proceeded against as if he had no certificate at all.

In every month of July, the justices of every county, riding, &c, in which they usually act, shall hold a special session, on seven day's notice, for the purpose of granting licences to deal in game; and the majority assembled at such special sessions, or at some adjournment thereof, not being less than two, are hereby authorised to grant, if they think fit, to any person being a householder or keeper of a shop or stall within such district, &c. and *not* being a victualler or innkeeper, or licensed to sell beer by retail, nor being the owner, guard, or driver of any mail-coach or vehicle for the conveyance of letters, or of any stage-coach, stage-waggon, van, or other public conveyance, nor being a carrier, or higgler, nor being in the employment of any of the above-mentioned persons, a licence empowering the person to whom it is granted to buy game from any person lawfully authorized to sell it, and to sell the same at one house, shop, or stall only, kept by the person so licensed; provided that such person affix and keep on the outside of the front of his house, &c., in legible characters, his christian and surname, together with the words, "*Licensed to deal in game*;" such licenses to continue in force for the period of one year next after the granting thereof. And persons so licensed to deal in game must take out a *certificate*, with a duty of *two pounds*.

The collectors are to make out a list of persons licensed to deal in game; one license is sufficient where there are partners in any firm; and licences become *void* in case of any conviction under this Act.*

* By 7 & 8 Geo. IV. c. 48, persons having obtained certificates in Great Britain, are exempt from duty in Ireland; and persons having paid the Irish duty may take game in Great Britain by only paying the additional duty

The penalty for killing game without a certificate is *five pounds*;—and persons not having a right or permission to kill game on any land, who wilfully take out or destroy in the nest upon such land, the *eggs* of any *bird of game, swan, wild duck, teal,* or *widgeon*, or knowingly *have in their possession* or control any *such eggs* so taken, shall, on conviction before two justices, pay for every such egg any sum of money not exceeding *five shillings*, with the *costs* of the conviction.

The penalty for selling game without a license, and on certificated persons selling to unlicensed dealers, is *forty shillings* and *costs*.

Innkeepers may, without any license to deal in game, sell game for consumption in their own houses, such game having been procured from some licensed person, and not otherwise.

If any person not licensed to deal in game, buy game from any person not licensed, except *bonâ fide* from a person affixing to the outside of the front of his house, &c. a board, purporting that he is a person licensed to deal in game, every such offender shall forfeit any sum not exceeding *five pounds*, which two justices may think fit, with the *costs* of conviction.

If any person licensed to deal in game, buy game from any person not authorised to sell game, for want of a game certificate, or licence to deal in game;—or if any person licensed to deal in game, sell or offer for sale any game at his house, without such board as aforesaid, or cause such board to be affixed to more than one house, &c.;—or, if any person not licensed to deal in game, assume, by affixing such board as aforesaid, or exhibiting any certificate, or by any other device or pretence, to be a person licensed to deal in game; every such offender shall forfeit any sum not exceeding *ten pounds*, as any two justices may think fit, with the costs of the conviction.

But, the buying and selling of game by any person employed for any licensed dealer in game, in the usual course of his employment upon the premises where such dealing is carried on, is lawful in every case where it would have been lawful in the licensed dealer himself:—and a licensed dealer may sell any game sent to him to be sold on account of any other licensed dealer.

The penalty on persons trespassing in the day-time upon lands in search of game, is *forty shillings* and *costs*; and, if five or more persons together trespass in the day-time upon any land in pursuit of *game, woodcocks, snipes,* quails, land-

rails, or coneys, *each* of such persons shall forfeit any sum not exceeding *five pounds*, as *one* justice may think fit, with the *costs* of the conviction. And where the *occupier* of the land, not being entitled to the game, allows any person to kill it, the party entitled to the game may enforce the penalty.

Such trespassers may be required to quit the land, and to tell their names and abodes; and, in case of refusal, may be arrested, the penalty not exceeding *five pounds;* but parties so arrested must be *discharged*, unless brought before a justice within *twelve hours*.

Where five or more persons are found on any land, or in any of his Majesty's forests, &c. in the day-time, in search of game, &c. being *armed with a gun*, and by violence, intimidation, or menace, prevent, or endeavour to prevent, any person from approaching them to require them to quit the land, or tell their names and abode respectively, such persons shall forfeit any sum not exceeding *five pounds each*, which *two* justices may think fit, with the *costs* of the conviction, in *addition* to, and independent of, any other penalty to which they may be liable under this Act.

The penalty for trespass in the *day-time* in his Majesty's forests, &c. is *forty shillings* and *costs;* and *day-time* shall be deemed to commence at the beginning of the last hour before sun-rise, and to conclude at the first hour after sun-set, for the purposes of this Act.

The provisions as to trespassers are not to apply to persons *hunting*, &c., nor to persons claiming right of free warren, nor to lords of manors, or gamekeepers; nor do they preclude the right of action for trespass, but proceeding under this statute is a bar to the action, and both proceedings *cannot* be taken.

Game may be *taken from* trespassers who will not deliver it up when required so to do.

Penalties and forfeitures under this Act, the application of which is not otherwise provided for, must be paid to an overseer of the poor, or some other officer, as the convicting justice or justices may direct. — The justices may also direct penalties, &c. to be paid immediately, or in any given time; and, in default of payment, offenders may be imprisoned in the common gaol or house of correction, *with* or *without* hard labour, for any term not exceeding *two months*, where the amount, exclusive of costs, does not amount to *five pounds;* and for any term not exceeding *three months* in any other case; the imprisonment *to cease* in each of the cases aforesaid, upon *payment* of the *penalty* and *costs*.

Summary proceedings under this Act must be commenced *within three months* after the commission of the offence. Persons charged upon the oath of a credible witness with any offence, may be summoned to appear before one or two justices, as the case may require, at a time and place to be named in the summons; and if the parties do not appear, the justice or justices, on due proof of the summons, may hear and determine the case in the absence of the parties, or may issue warrants for apprehending the parties and bringing them before the court; or the justice, in the first instance, if he have reason to suspect, from information *upon oath*, that the party is likely to abscond, may issue his warrant without any previous summons.

It is not necessary to negative by evidence any certificate, license, consent, authority, or other matter of exception or defence; but the party seeking to avail himself of any such certificate, &c. shall be bound to prove the same.

Convictions are to be returned to the sessions.

This Act does not preclude actions for trespass; but *no double proceedings are to be taken for the same trespass;* and persons punished as trespassers under this Act, will not be liable to any action at law.

Actions against any person for proceedings in execution of this Act, must be laid and tried in the county where, and be commenced within six months after, the fact is committed, and not otherwise;—and notice of such action, and of the cause thereof, must be given to the defendant *one calendar month* at least before the commencement of the action; and in any such action the defendant may plead the general issue, and give this Act and the special matter in evidence at any trial to be had thereon; and the plaintiff shall not recover in any action, if tender of sufficient amends is made before the action is brought, or if a sufficient sum of money shall have been paid into Court after such action is brought, by or on behalf of the defendant.

This Act does not extend to Scotland or Ireland.

It will be seen that the principal alterations which are effected by this statute, are the abolition of the qualification of rank and property to kill game, the authority being now conferred merely by the certificate; leaving, however, the parties who may trespass in pursuit of game to the ordinary proceedings, as in the case of trespass, to which even the qualification of rank and property was no exception. The act

also legalizes the sale of game, under certain restrictions. Lords of manors may now appoint several gamekeepers for the same manor, and the various penalties are recoverable in a summary way before two magistrates; and even before one in case of trespass;—and appeals to the sessions are allowed in all convictions.

The rights of lords of manors, however, are not affected by it: and the privilege of qualified persons of giving leave to other persons to shoot over *their* grounds, is now only confined to landlords, with certain exceptions. The tenants may kill snipes, quails, landrails, or rabbits, on the land, but cannot give permission to others to do so; the tenants may take and kill game on lands held under leases, prepared since the passing of this act, in their own occupation, unless they are restricted by the express terms of the lease; but, generally, under previously existing leases, the game would be held to belong to the landlord, without an express reservation in favour of the tenant.

By 1 & 2 W. IV. c. 32, s. 36, if any person be found, by day or night, on any land in search of game, and have in his possession any game which "appears to have been recently killed," the person having the right of killing the game, or the occupier (whether having the right by reservation or not), or their gamekeepers and servants, may demand such game, and seize it, if not immediately delivered up.

Deer.—By the 7 & 8 Geo. IV. c. 29, s. 26, to course, hunt, snare, carry away, kill, or wound, or attempt to kill or wound, any deer kept in the enclosed part of any forest, chase, or purlieu, or in any enclosed land wherein deer is usually kept, is felony, subjecting the offender to seven years' transportation, or imprisonment, with or without whipping, for two year; if the offence be committed in the unenclosed part of such forest, chase, or purlieu, the offender shall forfeit any sum not exceeding £50, on conviction before one justice; for a second offence may be transported, or imprisoned, as last mentioned. Suspected persons found in possession of deer, or parts of any deer, or of any snare or engine for taking deer, shall, on conviction before one magistrate, forfeit any sum not exceeding £20. Setting engines for taking deer, or pulling down any fence or bank enclosing land where deer are kept, subjects to a like forfeiture. Deerkeepers, or their assistants, may seize the guns or dogs of offenders for the use of their masters; and to beat or wound in resisting such seizure, subjects to transportation for seven years, or imprisonment for two years (s. 1, 27, 28, 29).

Hares and Coneys.—By 7 & 8 George IV. c. 29, s. 30,

persons unlawfully and wilfully, in the night-time, taking or killing any hare or coney in any warren or ground lawfully used for the keeping thereof, whether enclosed or not, are guilty of a misdemeanor; and persons guilty of the same offence in the *day-time*, or of using any snare or engine, are subject to a penalty of £5. But this does not extend to the taking, in the day-time, any coneys on any sea-bank or river-bank in Lincolnshire, so far as the tide shall extend, or within a furlong of such bank.

Pigeons.—By 7 & 8 Geo. IV. c. 29, s. 33, to kill, wound, or take any house-dove or pigeon under circumstances that do not amount to larceny, subjects to a penalty not exceeding £2, over and above the value of the bird.

Poaching in the Night.—The 9th Geo. IV. c. 69, passed for the prevention of nocturnal poaching by armed men, enacts, that if any person by night shall take or destroy game or rabbits on any land, or shall enter therein with gun, net, engine, or other instrument, for the purpose, he shall, on conviction before two justices, be committed to hard labour in the house of correction for not exceeding three calendar months, and at the expiration of the period, find sureties, himself, in £10, and two others in £5 each; or one surety in £10 not to offend again for the following year; and in case of not finding sureties, be further imprisoned for six months; for a second offence, to be imprisoned six calendar months, and find sureties himself in £20, and two others in £10 each, not to offend during the two following years; in case of not finding sureties, be further imprisoned for one year. The third offence is made a misdemeanor, punishable with transportation for seven years, or imprisonment with hard labour not exceeding two years. Persons offending in Scotland a first, second, or third time, are liable to the same punishments.

Owners and occupiers of land, their servants, and assistants, may apprehend offenders, either on the spot, or pursue them to other places; and the offenders asaulting or offering violence with gun, club, stick, or otherwise, shall be deemed guilty of misdemeanor, and liable to transportation for seven years, or imprisonment with hard labour for two years.

Persons to the number of three or more entering by night any land for the purpose of taking or destroying game or rabbits, and being armed with a gun, bludgeon, or other offensive weapon, are guilty of a misdemeanor, and subject to transportation not exceeding fourteen years, or to imprisonment to hard labour not exceeding three years.

The night is considered to commence at the expiration of the first hour after sun-set, and to conclude at the beginning

of the last hour before sun-rise. The word *game* is deemed to include hares, pheasants, partridges, grouse, heath or moor-game, black-game, &c.

GAMEKEEPERS.

Gamekeepers can only be appointed by particular persons, such as the lord of a manor, or devisee of a manor in trust, the owner of a free warren, and a corporate body.

Gamekeepers may seize guns and nets used by uncertificated persons, but they cannot seize hounds or game (except as provided by 1 and 2 Wm. IV. as to game recently killed); nor are they authorised to shoot dogs, although following game within their manors, unless the dogs are kept by uncertificated persons, and used for the purpose of killing game. But a regular *park-keeper* may destroy dogs in the act of pursuing deer or rabbits; and none but the lord or lady of a manor, a justice of the peace, or a gamekeeper, have a right to seize dogs or guns; nor can private persons legally shoot dogs for trespassing upon their lands in pursuit of game: but where game is started by one person on the ground of another, the latter may seize the game for his own use, as his local property continues in it, although driven from his land; and the servant of a lord of the manor may seize game killed within it by uncertificated persons for the benefit of the lord.

Gamekeepers killing or beating for game *out* of their respective manors, are liable to penalties, as if they had no deputation; but their dogs and guns cannot be seized. Gamekeepers may also be discharged without notice, except there be an agreement to the contrary. As to the right of gamekeepers to carry and *use* fire-arms against poachers, Mr. Justice Bailey, at Lancaster, in 1827, said that no gamekeeper had any right to carry fire-arms for such a purpose, nor to fire at any poacher whatever; nor had any proprietor of game the power to give any such authority to his keeper, who might certainly take any poacher into custody, but it was at his own peril that he ventured to use fire-arms, excepting, of course, the right to use them in self-defence, if their lives were endangered by any previous attack on the part of the poachers.

FORESTS, CHASES, WARRENS, AND PARKS.

By the common law the possessor of land has an exclusive right to all the wild animals found upon it, and he may pursue and kill them ; and he may now by the common law, which in so far continues unrestrained by any subsequent statute, support an action against any person (unless privileged by free-warren) who shall take, kill, or chase them. The statutary qualifications to kill game, or, since they were abolished, the taking out of a certificate, conveys no property not previously existing, neither does it exempt from any punishment to which a person is liable for trespassing on another's ground : it merely exempts him from the penalties to which he would be liable for killing game without having first taken the annual license required by law.

Besides the absolute property which the owner of the land possesses in right of the soil, a person may also have a qualified property in wild animals by grant of privilege ; that is, he may have the privilege of taking or killing them, in exclusion of other persons, in virtue of a franchise to have a forest, chase, warren, or park. A forest is a royal domain for the preservation of the king's beasts and fowls of forest, and is subject to its own laws, courts, and officers.

Before the *Charta de Foresta*, the sovereign could make a forest of any extent over the lands of his subjects. It is the highest franchise relating to game ; a free chase is the next in degree ; a park the next ; and the last a free-warren.—*Chitty's Game Laws.*

The number of forests is sixty-nine, of which the four principal are, New Forest, on the Lea ; Sherwood Forest, on the Trent ; Dean Forest, on the Severn ; and Windsor Forest, on the Thames.

A chase is of a middle nature, between a forest and a park ; it differs from the former in that it may be held by a subject, and is governed by the common, not the forest, law ; and from the latter, that it is not enclosed. A man may have a chase over another's ground, with privilege to keep royal game therein, protected even from the owner of the land. It is said there are thirteen chases in England.

A park is an enclosed chase, extending only over a man's own land, privileged for wild beasts. There are only seven hundred and eighty parks ; for it is not every

field or common which a gentleman pleases to surround with a wall or palings, and to stock with a herd of deer, that is made a legal park. To constitute it, three things are requisite: 1. A royal grant thereof. 2. Enclosure by rail, wall, or hedge. 3. Beasts of a park, such as buck, doe, &c. And when all the deer are destroyed, it can no more be accounted a park; for a park consists of *vert*, *venison*, and *enclosure;* and if it is determined in any of them, it is a total disparking.

Free-warren is a place privileged by prescription or grant from the king for the keeping of beasts and fowls of the warren, which are hares and coneys, partridges, pheasants, and some add quails, woodcocks, and water-fowl, (*Terms de Ley*, 589.) Twenty years' undisturbed exercise of a claim of a warren or park will afford presumptive evidence of right in the party so enjoying it. The owner of a warren may lawfully kill any dog which is used to hurt the warren.

The rights of any forest, chase, or warren, are not affected by the new Game Act. All the franchises of the description above-mentioned, having their origin in the crown, may be destroyed by a reversion to the crown, or by surrender, or forfeiture, in consequence of a breach of the trust upon which they were granted.

CORN LAWS.

THE low prices of agricultural produce in the years 1813-14, and the apprehension of a consequent reduction in the rents of the landholders from throwing out of cultivation the inferior soils, which the high prices produced by a paper currency had brought out of pasturage into arable land, gave rise to several laws for the regulation of the foreign trade income, for what is called the protection of the agricultural interest. By one act, all restrictions on the exportation of corn were repealed; a measure, however, which in this country could have little effect in raising the price. But by the 55 George III. c. 26, the importation of corn, when it fell below a certain price, was prohibited; and this act had a tendency at least to sustain the prices, but it has since been repealed;

and the general act which now regulates foreign trade in corn, and the mode of ascertaining the averages, is the 9 Geo. IV. c. 60. This statute allows the import of wheat, and other description of grain, according to a scale of duties, varying with the average price of corn in the home market. By s. 3, the following duties, regulated according to the average prices of British corn, are imposed on the importation of corn, grain, meal, and flour, the produce of any foreign country, or of any British possession out of Europe :—

If imported from any Foreign Country :

	Duty. £	s.	d.
WHEAT :—The average being, in the British market,—			
62*s*. and under 63*s*. the quarter	1	4	8
63*s*. and under 64*s*. the quarter	1	3	8
64*s*. and under 65*s*. the quarter	1	2	8
65*s*. and under 66*s*. the quarter	1	1	8
66*s*. and under 67*s*. the quarter	1	0	8
67*s*. and under 68*s*. the quarter	0	18	8
68*s*. and under 69*s*. the quarter	0	16	8
69*s*. and under 70*s*. the quarter	0	13	8
70*s*. and under 71*s*. the quarter	0	10	8
71*s*. and under 72*s*. the quarter	0	6	8
72*s*. and under 73*s*. the quarter	0	2	8
At or above 73*s*. the quarter	0	1	0
Under 62*s*. and not under 61*s*. the quarter . .	1	5	8
And in respect of every integral shilling, or any part of each integral shilling, by which such price shall be under 61*s*. such duty shall be increased 1*s*.			
BARLEY :—The average 33*s*. and under 34*s*. the quarter	0	12	4
And in respect of every integral shilling, by which such price shall be above 33*s*. such duty shall be decreased by 1*s*. 6*d*. until such price shall be 41*s*.			
Whenever such price shall be at or above 41*s*. the quarter	0	1	0
Whenever such price shall be under 33*s*. and not under 32*s*. the duty shall be for every quarter .	0	13	10
And in respect of each integral shilling, or any part of each integral shilling, by which such price shall be under 32*s*. such duty shall be increased by 1*s*. 6*d*.			
OATS :—The average price 25*s*. and under 26*s*. the quarter	0	9	3
And in respect of every integral shilling, by which such price shall be above 25*s*. such duty shall be decreased by 1*s*. 6*d*. until such price shall be 31*s*.			

	Duty. £	s.	d.
Whenever such price shall be above 31s. the quarter	0	1	0
Whenever such price shall be under 25s. and not under 24s. the duty shall be for every quarter .	0	10	9
And in respect of each integral shilling, or any part of each integral shilling, by which such price shall be under 24s. such duty shall be increased by 1s. 6d.			
RYE, PEAS, and BEANS:—The average price 36s. and under 37s. the quarter	0	15	6
And in respect of every integral shilling by which such price shall be above 36s. such duty shall be decreased by 1s. 6d. until such price be 46s.			
Whenever such price shall be at or above 46s. the quarter	0	1	0
Whenever such price shall be under 36s. and not under 35s. per quarter	0	16	9
And in respect of each integral shilling, or any part of such integral shilling, by which such price shall be under 35s. such duty be increased by 1s. 6d.			
WHEAT, MEAL, and FLOUR:—For every barrel, being 196 pounds, a duty equal in amount to the duty payable on 38 gallons of wheat.			
OATMEAL:—For every quantity of 181½ pounds, a duty equal in amount to the duty payable on a quarter of oats.			
MAIZE or INDIAN CORN, BUCK-WHEAT, BEER or BIGG:—For every quarter, a duty equal in amount to the duty payable on a quarter of barley.			

If the proudce of, and imported from, any British Possession in North America, or elsewhere out of Europe:

	£	s.	d.
WHEAT:—For every quarter, until the price of British wheat shall be 67s. the quarter .	0	5	0
Whenever such price shall be at or above 67s. the quarter	0	0	6
BARLEY:—For every quarter, until the price of British Barley shall be 34s. the quarter . . .	0	2	6
Whenever such price shall be at or above 34s. the quarter	0	0	6
OATS:—For every quarter, until the price of British oats shall be 25s. the quarter	0	2	0
Whenever such price shall be at or above 25s. the quarter . . . . - . .	0	0	6
RYE, PEAS, and BEANS:—For every quarter, until the price of British rye, or of peas, or beans, shall be 41s.	0	3	0

	Duty. £ s. d.
Whenever such price shall be at or above 41s. the quarter................................	0 0 6
WHEAT-MEAL and FLOUR:—For every barrel, being 196 pounds, a duty equal in amount to the duty payable on 38½ gallons of wheat.	
OATMEAL:—For every quantity of 181½ pounds, a duty equal in amount to the duty payable on a quarter of oats.	
MAIZE or INDIAN CORN, BUCK-WHEAT, BEER or BIGG:—For every quarter, a duty equal in amount to the duty payable on a quarter of barley.	

British Colonial Corn.—No corn, grain, meal, or flour, to be shipped from any British possession out of Europe, as the produce of such possession, until the owner or shipper shall have made, before an officer of customs, a declaration, in writing, specifying the quantity of each sort, and the place of produce; nor till he shall have obtained from the officer of customs a certificate of the quantity so shipped. A copy of such declaration, and the certificate, to be delivered to an officer of customs at the place of importation, before such British colonial corn can be entered for home consumption; and any false statement as to quantity or place of produce subjects the party making it to a penalty of £100 and the forfeiture of such produce (s. 4).

Malt and Ground Corn is prohibited from importation into the United Kingdom for consumption there, except only wheat-meal, wheat-flour, and oatmeal. The importation for consumption into Ireland of any corn ground is also prohibited: any such article so imported to be forfeited (s. 5).

Monthly account of Importation.—The Commissioners of Customs are, once in each month, to cause to be published, in the London Gazettes, an account of the total quantity of each sort of corn, grain, meal, and flour, imported into the United Kingdom; with an account also of the total quantity of each sort remaining in warehouse at the end of each preceding calendar month (s. 6).

If any foreign state subjects the vessels, manufactures, or produce of the British dominions, to higher duties or charges than are levied upon their own subjects, or shall not allow similar bounties and drawbacks, his majesty in council may prohibit all importation of corn and flour from such foreign state (s. 7).

Weekly returns of the purchases and sales of British corn are to b emade from the following cities and towns :

Abergavenny
Alnwick
Andover
Appleby
Aylesbury
Aylesham
Barnstaple
Barnard Castle
Basingstoke
Beccles
Bedford
Belford
Berwick-upon-Tweed
Beverley
Birmingham
Blandford
Bodmin
Bolton
Boston
Bridgewater
Bridlington
Bridport
Bristol
Bungay
Bury St. Edmonds
Caernarvon
Cambridge
Canterbury
Cardiff
Carlisle
Carmarthen
Chard
Chelmsford
Chepstow
Chester
Chichester
Cirencester
Cockermouth
Colchester
Coventry
Darlington
Dartford
Denbigh
Derby
Diss
Dorchester
Durham
East Dereham
Egremont
Ely
Exeter
Fakenham
Fareham
Four Lane Ends
Frome
Gainsborough
Glanford Bridge
Gloucester
Guildford
Hadleigh
Harleston
Havant
Haverford West
Helstone
Hertford
Hexham
Holt
Howden
Hull
Huntingdon
Ipswich
Kingsbridge
Kirby in Kendal
Lancaster
Launceston
Leeds
Leicester
Lewes
Lincoln
Liverpool
London
Lowth
Lowestoff
Lynn
Maidstone
Manchester
Middlewich
Monmouth
Morpeth
Nantwich
Newark
Newcastle-upon-Tyne
New Malton
Newport
Norwich
North Walsham
Northampton
Nottingham
Oxford
Penrith
Plymouth
Pont-y-Pool
Portsmouth
Preston
Reading
Redruth
Ringwood
Royston
Romford
Rye
Shaston
Sherborne
Sheffield
Sleaford
Southampton
Spalding
St. Austel
Stamford
Stockton
Stow-on-the-Wold
Stowmarket
Sudbury
Sunderland
Taunton
Tavistock
Tetbury
Tewkesbury
Thetford
Totness
Truro
Ulverston
Uxbridge
Wakefield
Walton
Walsingham
Wareham
Warminster
Warrington

Wells	Windsor	Worcester
Whitby	Winchester	Wrotham
Whitehaven	Wisbeach	Yarmouth
Wigan	Woodbridge	York

And inspectors of corn-returns are to be appointed in each of these places; with power for his majesty to appoint a comptroller of corn-returns.

In the *City of London*, the lord mayor and aldermen are to appoint an inspector of corn-returns, with the power of removal on proper cause; the office not to be executed by deputy, unless in sickness or temporary incapacity, when a deputy may be appointed by the lord mayor and aldermen, s. 13, 14.

No miller, maltster, cornfactor, merchant, clerk, or agent, engaged in the corn trade for six months preceding, is qualified to be an inspector or deputy; and inspectors or deputies entering such avocations, they shall be removed from office, and considered disqualified, s. 15. The inspectors, &c. must take the prescribed oath, and their appointment must be enrolled at the following sessions for the city. Every dealer in corn in the city of London, or within five miles of the Royal Exchange, before carrying on business, must deliver a written declaration to the lord mayor, or one alderman, in the following words:—

"I, A. B. do declare, That the returns to be by me made conformably to an Act passed in the ninth year of the reign of king George the Fourth, intituled [here set forth the title of this Act] of the quantities and prices of British corn which henceforth shall be by or for me sold or delivered, shall, to the best of my knowledge and belief, contain the whole quantity, and no more, of the corn *bonâ fide* sold and delivered by or for me within the periods to which such returns respectively shall refer, with the prices of such corn, and the names of the buyers respectively, and of the persons for whom such corn shall have been sold by me respectively; and to the best of my judgment the said returns shall in all respects be conformable to the provisions of the said Act."

This declaration must be subscribed by the person making it, and a certificate delivered by the lord mayor or alderman to the inspector for the city, s. 18. Every cornfactor is to make his weekly return on Wednesday, to the inspector, signed with his name, and comprising a statement of the

quantities of corn he has sold, the prices, names of buyers, and persons for whom sold.

Inspectors for the *cities* and *towns* above-mentioned are to be appointed by the justices of the counties or ridings in which they are situate; or if having an exempt jurisdiction, by the mayor, or other chief officer, and the justices assembled at quarter sessions for the city or town. No person to be inspector in the country who has been engaged in the corn-trade within twelve months preceding. Country inspectors must also make the declarations and returns to be made by corn-dealers for the city of London. And no inspector, either in London or the country, is to forward any returns, until he has ascertained the persons making them have made the requisite declaration.

For the publication of the *average price*, every inspector is weekly to transmit to the comptroller of corn returns a statement of the quantities and prices of corn sold in his respective district; and from these returns the average prices of all British corn, by which the rate of the duties is to be regulated, are to be made up in the following manner:—

The comptroller shall, every Thursday in each week, from such returns so received by him during the week next preceding, ending on and including the Saturday in such preceding week, add together the total quantities of each sort of British corn respectively appearing by such returns to have been sold, and the total prices for which the same shall appear to have been sold, and shall divide the amount of such total prices by the amount of such quantities of each sort of British corn, and the sum produced shall be added to the sum in like manner in the five weeks immediately preceding the same, and the amount of such sums so added shall be divided by six, and the sum given shall be deemed the aggregate average price of each sort of British corn respectively; and the comptroller shall cause such aggregate weekly averages to be published in the next succeeding Gazette; and on Thursday in each week he shall transmit a certificate of such aggregate average prices to the collector or other chief officer of the customs at each of the several ports of the United Kingdom; and the rate and amount of the duties to be paid under the provisions of this Act shall be regulated at each of the ports of the United Kingdom by the aggregate average prices of British corn at the time of the entry for home consumption of any corn, grain, meal, or flour, chargeable with any such duty, as such aggregate

average prices shall appear and be stated in the last of such certificates which shall have been received by the officer of customs at such port.

Weekly returns of prices may also be obtained by an order of privy council from other places than those mentioned; but such returns not to be admitted into the averages made up for regulating the duties: and the comptrollers have the power of omitting in their averages any returns they may suspect to be fraudulent.

Every inspector to put up in the market-place, or, if no market-place, in some other conspicuous place, a copy of the last return made by him to the comptroller, omitting the names of the parties who have sold or bought the corn. The salary of the inspector of the city of London not to exceed £300, and of each inspector for the country not to exceed £50, which is to be paid out of the duties of customs or excise.

LAWS RELATING TO BREAD.

The statute 1 and 2 Geo. IV. c. 50, regulates the making and sale of bread, beyond the distance of ten miles from the Royal Exchange in London; and provides that such bread shall be made from the flour of wheat, barley, rye, oats, buck wheat, Indian corn, peas, beans, rice, and any other kind of grain; and of potatoes, common salt, pure water, with eggs, milk, yeast, barm, leaven, and potatoe yeast, mixed in such proportions as the makers and sellers may think proper. But no loaves of bread called *assize loaves* are to be made where any loaves of bread called *priced* bread is made at the same time, under a penalty of not exceeding *forty shillings*, nor less than *ten*.

Master bakers, or journeymen, *adulterating* bread by using *alum*, or any other unwholesome material, and convicted thereof before one justice, either on their own confession, or on the oath of one or more credible witnesses, shall forfeit not exceeding *twenty pounds*, nor less than *five pounds*, and on default of payment they may be committed to the house of correction; but the statute gives a power of appeal to the sessions against all convictions.

The adulteration of *meal* and flour is also punishable with the same penalty; and justices may besides cause the names of such offenders to be published in any newspaper of the district.

Loaves made of any other grain than the flour of

wheat are to be marked with a large Roman M, under a penalty of not exceeding *forty shillings*, nor less than *ten shillings*, for every loaf not so marked.

Magistrates and peace officers, or officers of parishes, are authorized by warrant to *search* the *houses*, *premises*, &c. of millers, mealmen, and bakers, for any ingredient or mixture used for the adulteration of bread or meal; such ingredients may be seized and disposed of as the magistrate may think proper; and the penalty on the discovery of such ingredients is not less than *five pounds* nor more than *twenty pounds*. The names of such offenders also may be published.

Bakers and sellers of bread are to keep *weights* for weighing bread in their shops, and their customers may require bread to be weighed in their presence, on penalty of refusal of not less than *twenty shillings*, nor more than *five pounds*.

Bakers are not to sell, nor expose to sale, any bread, rolls, or cakes, on *Sunday;* nor are they to bake or deliver any meat, pudding, pie, tart, or other victuals, *after half-past one* in the afternoon: and no meat, pudding, pie, &c., is to be brought to, or taken from, any bakehouse during divine service, nor within one quarter of an hour before the commencement thereof, under a penalty of *five shillings* for the *first* offence, *ten shillings* for the *second*, and *twenty shillings* for the *third* and every subsequent offence.

No millers, bakers, or corn dealers, can act as magistrates in the execution of this act, under a penalty of *fifty pounds*.

In the *City of London*, and within *ten miles* from the *Royal Exchange*, the making, &c. of bread is regulated by 3 Geo. IV. c. 106; and the general principles correspond with those already quoted as regulating the sale of bread in the country; but the penalties for baking, &c. on the *Sunday*, and for millers, mealmen, and bakers, acting as magistrates, are respectively *doubled*.

LAWS RELATING TO BREWERS.

By statute 6 Geo. IV. cap. 81, every brewer of table or other beer for sale, in Great Britain and Ireland, must take out a yearly licence, upon the following scale.

Every person *first* taking out a licence shall pay 10*s.*; and within ten days after the 10th of the following October, must pay such additional duty, as the *quantity* of beer he may have brewed previous to the 10th of October may require, on the ensuing calculation.

Every brewer of *table-beer only* for sale, if the quantity of beer brewed within the year ending the 10th of October, previous to taking out such licence, shall not exceed twenty barrels, 10*s.*

Exceeding	20 and not exceeding	50	£1	0	0
	50	100	1	10	0
	100		2	0	0

And every brewer of beer for sale, other than table-beer only, if the quantity brewed within the year ending the 10th day of October, previous to taking out such licence, shall not exceed twenty barrels, 10*s.*

Exceeding	20 and not exceeding	50	£1	0	0
	50	100	1	10	0
	100	1000	2	0	0
	1000	2000	3	0	0
	2000	5000	7	10	0
	5000	7500	11	5	0
	7500	10,000	15	0	0
	10,000	20,000	30	0	0
	20,000	30,000	45	0	0
	0,000	40,000	60	0	0
	40,000		75	0	0

Every brewer of beer for sale, who shall retail such beer to be consumed elsewhere than on his her, or their premises, must pay for a licence £5 5*s.*

Every person, not being a brewer cf beer, who shall sell strong beer only, in casks containing not less than four gallons and a half, imperial standard gallon measure, or in not less than two dozen reputed quart bottles, at one time, to be drank or consumed elsewhere than on his, her, or their premises, must pay for a licence £3 3*s.*

Every person duly authorised to keep a common inn, alehouse, or victualling-house, and who sells beer, cider, or perry by retail, to be consumed in his house, or premises, if such house, &c. is not rated at a rent of £20 per annum, must pay for a licence £1 1*s*.

And if rated at £20 per annum, or upwards, £3 3*s*.

These duties are under the collection and management of the commissioners of excise.

Brewers in Ireland to be deemed, for the purposes of this Act, to have brewed one barrel of beer for every two bushels of malt employed in brewing.

Where the house and premises are not rated, the rent or annual value is to be certified by the tenant and landlord; and if such certificate be unsatisfactory, the commissioners of excise shall adopt other means for ascertaining the true rent or value thereof, which shall be conclusive.

Licences are to be granted within the limits of the chief office of excise in London, by the commissioners of excise, or such persons as they may employ for that purpose; and within the limits of the city of Edinburgh and Dublin respectively, by the commissioners or assistant commissioners there, or such persons as they may employ for that purpose; and elsewhere, by the collectors and supervisors of the respective excise collections, on payment of the duties.

Partners need not take out more than one licence for one set of premises; but *any person* exercising the trade of an auctioneer, must take out a separate licence for that purpose.

No person taking out a licence is required to give bond under this Act, except brewers of beer for sale in Ireland, and auctioneers whose bonds shall bear date with that of the licence, and are binding upon them from that day.

No one licence can authorise any person, except auctioneers, and maltsters, subject to the lowest rate of duty, to carry on his trade in more than one separate and distinct set of premises.

This Act does not extend to selling beer, cider, or perry, by publicans, being licensed beer retailers, or spirits, wine, or sweets, by the licensed retailers thereof, at fairs and races.

Licences granted under this Act may be removed, in case of fire or other accident rendering the premises useless for which they were granted, by application to the

commissioners, or other persons by whom the licences were granted.

Licences taken out by brewers and distillers, and by publicans, as retailers of beer, spirits, or foreign wine, or sweets or made wines, or mead, or metheglin, expire on the 10th of October in each year; and all other licences on the 5th day of July, to be renewed yearly, and notice for renewal given by the trader twenty-one days at least before the expiration of his current licence; and every such licence to bear date from the expiration of the former licence when regularly renewed, and when afterwards or otherwise granted, from the date of the application.

Licences may be granted to new beginners for a proportional part of the year, who shall pay duty accordingly, according to the quarter of the year in which the licence shall be taken out.

Persons who were before licensed, taking out a new licence, are *not* to be considered *new beginners,* except the old licence expired *two years* before the new licence is taken out.

Licences taken out by any brewers, distillers, or publicans, as retailers of beer, spirits, or foreign wine, or sweets or made wines, or mead or metheglin, under any former Acts, which shall expire between the periods herein mentioned, shall be renewed for a proportional part of the year, upon payment of duty accordingly, according to the quarter of the year in which they are taken out.

Licences may be transferred to the executors, wife, child, or assignee of the person licensed; but in case of beer to be retailed upon the premises, not without a certicate of a magistrate.

Persons disabled by conviction from keeping a common inn, &c. shall not be allowed to retail beer under any excise licence, and the clerk of the peace neglecting tc deliver a copy of conviction, shall forfeit *ten pounds.*

Where the retail beer licence becomes void by conviction as aforesaid, the retail spirit licence becomes void also.

Upon the expiration of the magistrate's authority to keep a public-house within the year, (no conviction having taken place,) a proportional part of the duties on the excise licences shall be returned.

Parties licenced must put up over their premises their names and trades, under a penalty for not so doing, (or on unlicensed persons doing the same,) of *twenty pounds.*

If any person or persons shall make or manufacture, deal in, retail, or sell, any goods or commodities hereinafter mentioned, or shall exercise or carry on any trade or business hereinafter mentioned, for the making or manufacturing, or dealing in, retailing, or selling of which goods or commodities, or for the exercising or carrying on of which trade or business a license is required by this Act, without taking out such licence as is in that behalf required, he, she, or they, shall for every such offence respectively forfeit and lose the respective penalty thereupon imposed, as hereinafter follows :—

Every brewer of table beer only, for sale ; every brewer of beer (other than table beer only) for sale ; every brewer of beer for sale, who shall retail such beer to be consumed elsewhere than on his, her, or their premises ; every person, not being a brewer of beer, who shall sell strong beer only in casks containing not less than four gallons and a half, or in not less than two dozen reputed quart bottles at one time, to be drank or consumed elsewhere than on his, her, or their premises ; so offending respectively, shall respectively forfeit and lose the sum of £100.

Every person who shall sell beer, cider, or perry by retail, to be drank or consumed in his, her, or their house or premises, so offending respectively, shall respectively forfeit and lose the sum of £50.

The *occupiers* of premises where excisable articles are retailed without licence by persons unknown, are to be deemed the retailers, if proved to be consenting or privy thereto ; and persons not producing their licences, on the demand of an *officer of excise*, are liable to a penalty of *twenty pounds*.

Informers against unlicensed traders are to be paid such sums as the commissioners may think proper, not exceeding *ten* pounds, where the penalty cannot be recovered.

INNS, ALE-HOUSES &c.

To bring all the matter on this subject under one head, it may be as well to insert here an abstract of the 9th Geo. IV. c. 61, which regulates the granting of licences to keepers of inns, ale-houses, and victualling houses in England.

1. General licensing meetings of justices are directed to be held annually in the various districts of the country; in the county of Middlesex and Surrey, *within the first ten days of the month of March;* and in every other county on some day *between the twentieth day of August and the fourteenth day of September* inclusive.

2. These meetings are to be appointed at some petty sessions, held at least twenty-one days before such general meetings, by notice affixed on the church door; and notice of the time and place be sent to the houses of all the justices, and to the houses of all persons keeping inns, and those who have given notice of their intention to apply for licences to open new public-houses.

3. These meetings may be adjourned at the discretion of the justices; but such adjourned meetings are not to be held within five days of the general meetings, and they must be held within the month of March in Middlesex and Surrey; and within the months of August or September in every other county.

4. Special sessions are to be appointed by the justices at the general meetings for the purpose of transferring licences.

5 Notice is to be given of the adjournment of the general annual licensing meeting and special sessions.

6. Justices in any way concerned as common brewers, distillers, maltsters, or retailers of any exciseable liquor, are not allowed to act as licensing magistrates.

7. When in small towns, liberties, &c. two justices not disqualified do not attend, the county justices may act.

8 But this power of acting, so given to county justices does not extend to the cinque ports.

9. The *majority* of justices at such meetings are to determine all questions respecting licences; and to sign all the licences which may be granted.

10. Every person intending to apply for a licence to sell exciseable liquor by retail, to be drunk or consumed in

any house not theretofore kept as an inn, shall affix or cause to be affixed a notice on the door of such house, and on the door of the church or chapel of the parish or place in which such house shall be situate; and, where there shall be no church or chapel, on some other public and conspicuous place within such parish or place, on three several Sundays, between the first day of January and the last day of February, in the counties of Middlesex and Surrey, and elsewhere between the first day of June and the last day of July, at some time between the hours of ten in the forenoon and of four in the afternoon, and shall serve a copy of such notice upon one of the overseers of the poor, and upon one of the constables or other peace officers of the said parish or place, within the month of February, in the counties of Middlesex and Surrey, and elsewhere within the month of July, prior to the general annual licensing meeting; and every such notice, and the copies thereof, shall be written in a fair and legible hand, or printed, and shall be according to the following form:

"To the overseers of the poor, and the constables of the parish of and to all whom it may concern:

"I, A. B. [*state the trade or occupation,*] now residing at in the parish of in the county of and for six months last past having resided at in the parish of [*or*, in the several parishes of] in the county [*or*, in the counties of ,] do hereby give notice, that [*if application is intended to be made to a special session, here state the cause for such application,*] it is my intention to apply at the general annual licensing meeting [*or*, at the special session] to be holden at on the day of next ensuing, for a licence to sell exciseable liquors by retail, to be drunk or consumed in the house or premises thereunto belonging, situate at [*here describe the house intended to be opened, specifying the situation of it, the person of whom rented, the present or late occupier, whether kept or used as an inn, alehouse, or victualling house, within the three years preceding; and, if so, by whom, and under what sign*]; and which I intend to keep as an inn, ale-house, or victualling house.

"Given under my hand, this day of one thousand eight hundred and ."

N.B. A copy of this notice to be served upon one of the overseers of the poor, and upon one of the constables or other peace officers of the parish in which the house intended to be opened is situate.

This must be signed by the party intending to make such application, or by his agent thereunto authorised, and shall set forth the situation of the house in a true and particular manner, and the christian and surname of the party applying, together with the place of his residence, and his trade or calling, during the six months previous to the time of serving such notice, and his intention to aply for a licence to sell exciseable liquor by retail, to be drunk or consumed in such house or premises.

11. Every person holding a licence under the authority of this Act, or his heirs, executors, administrators, or assigns, being desirous to transfer such licence to some other person, and intending to apply at the special session then next ensuing for permission so to do, shall, five days at the least prior to such special session, serve a notice of such his intention upon one of the overseers of the poor, and upon one of the constables or other peace-officers of the parish or place in which the house kept by the person so holding such licence is situate; and every such notice shall be written in a fair and legible hand, or printed, and shall be according to the following form:—

"To the overseers of the poor, and the constables of the parish of in the county of , and to all whom it may concern:

"I, A. B. [*or*, We, the executors, &c. &c. of the late A. B.] victualler, being authorised by virtue of the licence granted to me [*or*, him, *or*, her,] at the general annual licensing meeting, [*or*, special session] held at on the day of one thousand eight hundred and , to sell exciseable liquor by retail, to be drunk or consumed in the house or premises thereunto belonging, situate at [*here describe the situation of the house*], and commonly known by the sign of the do hereby give notice, that it is my [*or*, our] intention to apply at the special session to be holden at , in the county of , on day of , one thousand eight hundred and , for permission to transfer the abovementioned licence to C. D. [*state his trade or occupation*], now residing at , in the parish of , in the county of , and for six months last past having resided at , [*or*, in the several parishes of], in the county of [*or*, counties of], that the said C. D. intending to keep as an inn, ale-house, or victualling

house, the said house so as aforesaid kept by me [*or*, us] may sell exciseable liquors by retail, to be drunk or consumed in the said house or premises thereunto belonging.

"Given under my hand, this day of one thousand eight hundred and ."

N.B. A copy of this notice to be served upon one of the overseers of the poor, and upon one of the constables or other peace-officers of the parish in which is situate the house kept by the person whose notice it is.

This notice must be signed by the party intending to make such application, or by his agents thereunto authorised, and shall set forth the christian and surname of the person to whom it is intended that such licence shall be transferred, together with the place of his residence, and his trade or calling, during the six months previous to the time of serving such notice.

12. Persons hindered by sickness from attending any licensing meeting, may authorise others to attend for them, and to receive their licences, transfers, &c.

13. The following is the form of the licence :—

"At the general annual licensing meeting, [*or*, an adjournment of the general annual licensing meeting, *or*, at a special petty session,] of his Majesty's justices of the peace acting for the division [*or*, liberty, &c. *as the case may be*] of , in the county of , holden at , on the day of , in the year one thousand eight hundred and , for the purpose of granting licences to persons keeping inns, ale-houses, and victualling houses, to sell exciseable liquors by retail, to be drunk or consumed on their premises, we, being of his Majesty's justices of the peace acting for the said county, [*or*, liberty, &c. &c. *as the case may be*,] and being the majority of those assembled at the said session, do hereby authorise and empower A. L. now dwelling at , in the parish of , and keeping [*or*, intending to keep] an inn, ale-house, or victualling house, at the sign of the , in the of in the division and county aforesaid, to sell by retail therein, and in the premises thereunto belonging, all such exciseable liquors as the said A. L. shall be licensed and empowered to sell under the authority and permission of any excise licence, and to permit all such liquors to be drunk or consumed in his said house, or in the premises

thereunto belonging ; *provided that he* [*or*, she] do not fraudulently dilute or adulterate the same, or sell the same knowing them to have been fraudulently diluted or adulterated ; and do not use in selling thereof any weights or measures that are not of the legal standard ; and do not wilfully or knowingly permit drunkenness or other disorderly conduct in his [*or*, her] house or premises ; and do not knowingly suffer any unlawful games, or *any gaming* whatsoever, therein ; and do not knowingly permit or suffer persons of notoriously bad character to assemble and meet together therein ; and do not keep open his or her house, except for the reception of travellers, nor permit or suffer any beer, or other exciseable liquor, to be conveyed from or out of his [*or*, her] premises, during the usual hours of the morning and afternoon Divine Service in the church or chapel of the parish or place in which his [*or*, her] house is situated, on Sundays, Christmas-day, or Good Friday, but do maintain good order and rule therein ; and this licence shall continue in force from the day of next, until the day of then next ensuing, and no longer : provided that the said A. L. shall not in the mean time become a sheriff's officer, or officer executing the process of any court of justice, in either of which cases this licence shall be void. Given under our hands and seals, on the day and at the place first above written."

14. Persons duly licensed, who die, or are rendered incapable of keeping an inn, or become bankrupt, or take the benefit of the Insolvent Debtors' Act ; or if any person so licensed, his heirs, &c. or assigns, give up the possession of the house so licensed, or if the occupier of such house, being about to quit, has wilfully omitted or neglected to apply for a licence ; or if any house duly licensed is pulled down, or occupied under any Act for the improvement of the highways, or for any other public purpose ; or be, by fire, tempest, or other unavoidable calamity, rendered unfit for the legal purposes of an inn ; the justices assembled at a special session for the division, may grant to the heirs, &c. of such persons, or any person to whom they convey their interest, the licence required ; but such licences continue in force only from the day on which they are granted, until the fifth day of April, or the tenth day of October, then next ensuing, as the case may be ; and every person intending to apply for such licence

must, on some one Sunday within the six weeks next before such special session, at some time between the hours of ten in the forenoon and of four in the afternoon, affix, or cause to be affixed, on the door of such house, and on the door of the church or chapel of the parish or place in which such house shall be situate, and where there shall be no church or chapel, on some other public and conspicuous place within such parish or place, such and the like notice as is hereinbefore directed to be affixed by every person intending to apply at the general annual licensing meeting for a licence to sell exciseable liquors by retail, to be drunk or consumed in a house not theretofore kept as an inn, and shall in like manner serve copies of the said notice on one of the overseers of the poor, and on one of the constables or other peace officers of such parish or place.

15. Not more than seven shillings and sixpence to be charged for each licence and the service of the notices, under a penalty of five pounds.

16. No sheriff's officer or officer executing the legal process of any court of justice, is qualified to hold a licence under this Act.

17. No excise licence to be granted, except to a person licensed under this Act.—[*N.B. This clause is virtually repealed by the new Beer Act.*]

18. Every person who shall sell any exciseable liquor by retail, to be drunk or consumed *in his house or premises*, or suffer it to be done, without being duly licensed so to do; and every person duly licensed, who shall sell, or permit to be sold, any exciseable liquor by retail, to be drunk or consumed *in his house or premises*, not being the house or premises specified in such licence; shall, for every such offence, forfeit any sum not exceeding twenty pounds, nor less than five pounds, with costs. But no penalty for such sale shall be incurred by the heirs, &c. of any person duly licensed, who shall die, become bankrupt, or take the benefit of any Act for the relief of insolvent debtors, before the expiration of his licence, so that such sale is made *in the house or premises* specified in such licence, and take place prior to the special session then next ensuing, unless such special session shall be holden within fourteen days next after the death, &c. and in such case to the special session next after such special session aforesaid.

19. Persons so licensed, if required, must dispose of such liquors by the gallon, quart, pint, or half-pint mea-

sure, sized according to the standard, or forfeit the illegal measure, and pay not exceeding forty shillings, with the costs of the conviction, to be recovered within thirty days after the offence was committed.

20. Licensed houses may be closed by the justices, in case of riot, &c.

21. Persons licensed under this Act, convicted before two justices, shall, unless proof be adduced that such person had been theretofore convicted within the space of the three years preceding, be adjudged guilty of a first offence, and forfeit any sum not exceeding five pounds, with costs; but if proof is adduced of one previous conviction within three years preceding, such person shall be adjudged guilty of a second offence, and forfeit any sum not exceeding ten pounds, with costs; but if proof shall be adduced of two previous separate offences within three years, the justices are required to adjourn the further consideration of the charge to the next special session, or annual licensing meeting; and summons the person charged to answer, binding the person who makes such charge, and the witnesses, to prosecute and give evidence; and if such person is proved guilty, he shall be adjudged guilty of a third offence, and pay any sum not exceeding fifty pounds, with costs. But if before the hearing of such last-mentioned charge, the justices shall direct the hearing to be adjourned to the next general or quarter session, to be inquired of by a jury, or if the person charged, in writing, request the charge shall be so adjourned, the justices must grant such request, provided that the person charged forthwith enter into a recognizance, with two sufficient sureties, personally to appear to try such charge, abide judgment, and pay such costs as are awarded; and if a jury adjudge such person guilty of a third offence, such offender may be fined not exceeding one hundred pounds, or the licence may be forfeited, or such offender may be both fined and his licence forfeited; and if the licence be adjudged to be void, such offender shall be deemed incapable of selling exciseable liquors for three years; but the Court may, upon sufficient cause, adjourn the hearing to the then next general or quarter session, for final determination.

22. Proceedings at the session may be carried on by the petty constable, and expenses charged on the county rate.

23. Witnesses not attending, may be fined not exceeding ten pounds.

24. Penalties imposed upon justices may be recovered

by action of debt; one moiety to his majesty, and the other moiety to the party suing.

25. Other penalties by distress, or imprisonment in default of sufficient effects to distrain upon, at the rate of time of one month, if the penalty does not exceed £5; three months, if it does not exceed £10; and not exceeding six months, if the penalty is above £10; any person so imprisoned to be discharged at any time, on payment of the penalty and costs incurred.

26. Penalties may be divided in the discretion of the magistrates, so that *not more* than a moiety is given to the informer.

27. Persons aggrieved may appeal to the next general or quarter sessions, unless the sessions are holden within twelve days, and in that case to the next session, provided such person give the justice *notice in writing of his intention to appeal, and of the cause and matter thereof*, within five days, and seven days at the least before the session, and within such five days enter into a recognizance, with two sufficient sureties, as before, in clause 21. And in any complaint arising in any liberty, county of a city, county of a town, city, or town corporate, the person aggrieved may appeal to the quarter sessions of the county.

28. In cases of appeal, witnesses may be bound over to appear.

29. Costs may be adjudged by the Court.

30. Actions against justices, constables, &c. must be brought within three months.

31. Convictions must be on the oaths of one or more *credible* witnesses.

32. To prevent vexatious appeals, a conviction to the effect following shall be valid, without stating the case, or the facts or evidence, *viz.*

"Be it remembered, that on this day of in the year A. B. of was duly convicted before of his majesty's justices of the peace for the of of that [*here state the offence and the time and place when committed*], whereby the said A. B. has forfeited the sum of this being adjudged to be the first [*or* second, *or* third] offence [*as the case shall happen to be,*] against the provisions of an Act to regulate the granting of licences to keepers of inns, ale-houses, and victualling houses, in *England*, besides the costs of this

conviction, which the said justices do hereby assess at the sum of pursuant to the statute in such case made and provided. Given under hand and seal, the day and year above written.

33. Convictions are to be returned to the quarter sessions, and filed of record; and no writ of certiorari is allowed.

This Act, however, does not affect the two Universities; nor the licensing time in the city of London, nor the privileges of the Company of Vintners;* nor does it prohibit the sale of beer within the limits of the ground or place of any lawful fair.

LAWS RELATING TO THE SALE OF BEER.

The statute 1 Wm. IV. c. 51, repeals all rates, duties, and drawbacks, then payable on beer in Great Britain, from the 10th of October, 1830; excepting the *local duties* on beer, collected in burghs and some other places in Scotland. And another statute, 1 Wm. IV. c. 64, taking effect also from the same day, allows beer and cider to be *retailed* and *consumed* on the *premises* by merely taking out an excise licence; but this act does not affect the licences required to be obtained by brewers and wholesale dealers in beer,† nor by persons keeping inns, ale houses, and victualling houses, in which beer, wines, and spirits are sold, who must be licensed as heretofore by the magistrates, as well as the excise office.

Any person may obtain a licence under the Act for the General Sale of Beer and Cider in England, who *is* a householder, assessed to the poor-rates, and who is *not* a

* It has been repeatedly decided that the freemen of the Vintners' Company are privileged to sell wine without a licence, in the cities of London, Westminster, &c. but this does not extend to those freemen who have obtained their freedom by redemption only.

† A dealer in beer is described by 1 William IV. c. 51, as one who sells beer in quantities of not less than four gallons and a half, or two dozen reputed quart bottles, to be drank and consumed *elsewhere* than on the premises where sold. And such persons may either carry on their business as before, under the Intermediate Beer Act, 4 Geo. IV. c. 51, or the Act for regulating Retail Brewers, 5 Geo. IV. c. 54; or they may, besides, obtain an excise licence for retailing on the premises.

sheriff's officer, nor an officer executing the process of any court of justice. The commissioners of excise grant these licences within the limits of the chief office of excise in London. In other places, they are granted by the collectors and supervisors of excise. They continue in force twelve months, are to be granted within ten days after an application for them, and the due execution of the required bond. The duty on each licence was originally fixed at two guineas each; but now, by the amended Act of 4 & 5 Wm. IV. c. 85, the licence to sell beer to be consumed *upon* the premises is charged with a duty of *three guineas*; and only *one guinea* for a licence to retail beer to be consumed elsewhere. The licences to retail beer for consumption on the premises, were at first granted only on the parties entering into a bond with one surety in the penalty of £20, or two sureties in the penalty of £10 each, (the sureties being householders and parishioners) to answer for any fines inflicted under the Act; but by the *new statute*, in *addition* to entering into the bond, the applicant is required to produce a certificate signed by six parishioners assessed at £6 to the poor, and certified by *one* of the *overseers*, to the following effect:—

"We, the undersigned, being inhabitants of the parish [*or* township, *as the case may be*] of , and respectively rated to the poor at not less than six pounds per annum, and none of us being maltsters, common brewers, or persons licensed to sell spirituous liquors, or being licensed to sell beer or cider by retail, do hereby certify that A. B. dwelling in street, [*here specify the street, lane, &c.*] in the said parish, [*or* township, *&c.*] is a person of good character.

[*Here insert the day of signing the certificate.*]

(*Signed*) E. F.
G. H.
I. K.
L. M.
N. O.
P. Q.
[*Here state the residence of each of the persons signing, which must be six in number.*]

"I do hereby certify, that all the above-mentioned persons whose names are subscribed to this certificate, are inhabitants of the parish [*or* township, *&c.*] of rated to six pounds to the relief of the poor of the said parish.

(*Signed*) C. D. [overseer of the parish *or* township, *&c.*

"*Dated this* *day of* 183 ."

This certificate, however, is not required "for any house situated within the cities of *London* and Westminster; nor within any parish or place within the *bills of mortality;* nor within *any city* or *town corporate;* nor within the distance of *one mile* from the place used at the last election, as the place of election or polling place of any town returning a member or members to parliament, provided that the population, to be determined according to the last parliamentary census that shall have been taken in such city, town corporate, or town returning a member or members to parliament, shall exceed five thousand. But no licence is to be granted in such places, unless the premises are worth ten pounds per annum.

If there are not ten rated inhabitants in the place, the certificates must be signed by a *majority* of them (s. 2.); and overseers neglecting or refusing to certify that the persons who have signed the certificate are rated inhabitants, shall forfeit any sum not exceeding *five pounds*, to be recovered before any justice of the peace, unless the overseer shall shew reasonable cause for his refusal or neglect (s. 3).

In extra-parochial places, the certificate may be signed and given by inhabitants rated to the poor at six pounds in any adjoining parish (s. 9).

Persons certifying any matter in this certificate as true, knowing the same to be false, or using any certificate for the purposes of the act, knowing the same to be forged, to forfeit, on conviction before two justices, the sum of *twenty pounds;* all licences obtained upon such false certificates, to be null and void; and parties having made use of them, to be disqualified ever afterwards from obtaining licences to sell beer or cider by retail.

Every person so obtaining a licence, is to have painted in white letters, upon a black ground, the letters being at least *three inches* in length, publicly visible and legible on a board over the door, his christian and surname at full length, together with the words, "Licensed to sell beer by retail;" and by the new Act, 4 & 5 Wm. IV. c. 88, s. 18, "every person who shall be licensed to sell beer, or cider, or perry, by retail," shall "on the board required to be placed over the door of every person licensed, paint, or cause to be painted, and kept thereon, after the words, "Licensed to sell beer or cider by retail," the additional words, "Not to be drank on the premises," or, "To be drank on the premises," as the case may be, on penalty of forfeiting the sum of *ten pounds.*

Persons selling beer in *any other place* than that specified in the licence; or selling beer *without having renewed the licence*, after the year for which it had been granted has expired; or dealing in, or retailing any *wine* or *spirits;* are subject to a penalty of *twenty pounds* for every such offence; such penalty to be recovered, levied, and mitigated, as other excise penalties, one moiety being awarded to the king, and the other to the person informing, discovering, or suing for the same.

No licence for consumption on the premises is to be granted, without the required certificate; and, permitting beer to be drank in a neighbouring house, shed, tent, or building of any other kind, with intent to evade the provisions of the statute, is to be deemed drinking on the premises; and persons selling the same are subject to the same penalties as if the beer or cider had been consumed on the premises.

The duties on licences are placed under the general management and control of the commissioners of excise, and are to be recovered and accounted for under the provisions of 1 Wm. IV. c. 64; but the new Act does not affect the duty on licences to retail cider and perry, save that such licences must state whether the cider or perry sold by retail is to be consumed upon the premises where sold, or whether the liquor is not to be consumed upon the premises where sold.

And licences under the new act do not *authorize* (nor *permit*) persons taking out licences for the sale of beer or cider, to take out, or hold, any licence for the sale of wines, spirits, or sweets, or made wines, or mead, or metheglin; and persons licensed under this Act to sell beer or cider, who permit or suffer any *wine* or *spirits, sweets*, or *made wines, mead* or *metheglin*, to be *brought in* to his house and premises to be drank and consumed there, or shall suffer any *wines, spirits, sweets, mead*, or *metheglin*, to be drank or consumed in his house or premises, shall forfeit *twenty pounds* over and above any excise penalty to which he may be subject, to be recovered, &c. as other, not excise penalties, may be recovered, mitigated, and applied.

Retailers are compellable to produce their licences on any complaint laid before two justices for any offence against the tenor of such licences, or against the statute, on penalty of any sum not exceeding *five pounds*, for neglect or refusal; and they may be proceeded against for the offence in the same manner as is directed with

regard to persons guilty of a first offence under the first statute.

Persons not duly licensed to sell beer, as keepers of inns, &c. who shall sell any beer, cider, or perry, by retail, *not* to be consumed on the premises, without having an excise licence in force authorizing them so to do, are liable to a penalty of *ten pounds;* and to a penalty of *twenty pounds*, if sold without such excise licence, to be consumed *upon* the premises; and it is enacted that every sale of any beer, cider, or perry, in any less quantity than four gallons and a half, shall be deemed and taken to be a selling by retail.

Persons licensed to sell beer, cider, or perry, who sell spirits of wine, or sweets, or made wines, or mead, or metheglin, without being licensed so to do, are liable to the penalties imposed by the laws of excise for selling such articles without license.

The laws in force for the collection and management of the excise are extended to both these statutes; and the powers of 1 Wm. IV. c. 64, to apply to all persons licensed under the 4 and 5 Wm. IV. c. 85, and their sureties.

Persons trading in partnership in one house, &c. only require one licence.

Justices of the peace in petty sessions are required once a year—and in the counties of Middlesex and Surrey within the first ten days of March, and in all other counties between the twentieth of August and the fourteenth of September, inclusive—to fix *the hours* at which houses, &c. licensed to sell beer, shall be opened and closed; but persons aggrieved by any such order may appeal to the *quarter* sessions within four calendar months, giving the justices fourteen days notice of such intention to appeal; and the decision of the session is to be final. But in no case are such houses to be opened before five o'clock in the morning, or later than eleven o'clock at night; or before *one o'clock* in the *afternoon* on *Sunday, Good Friday, Christmas Day*, or day of public fast or thanksgiving. They must also be closed between three and five in the afternoon of such days. Penalty for every offence—*forty shillings;* and every separate sale is a separate offence.

Constables and officers of police are authorized and empowered to enter into all houses licensed to sell beer or spirituous liquors, to be consumed on the premises, when and so often as such constables and officers shall

think proper; and persons licensed, or their servants, refusing to admit, or not admitting, such constables, the person licensed shall forfeit any sum not exceeding *five pounds*, with the *costs* of the conviction, within *twenty days* after the offence was committed, for a first offence, and one justice may convict. And for a second offence, any *two* justices may, if they think fit, adjudge the offender to be disqualified from selling beer, ale, porter, cider, or perry, for any space of time *not exceeding two years* after conviction.

In case of riot or tumult, *one* justice may order any licensed house to be closed for such time as he may think necessary; and in cases of any *apprehended* riot, *two* justices may do the same; and keeping any such house open against the order of such justices is deemed an offence against the tenor of the licence.

The provisions for billeting soldiers only extend to those houses in which the beer, &c. is sold to be consumed on the premises.

Beer, except in quantities of less than half a pint, is to be sold by the gallon, quart, pint, or half-pint measure, and retailed in vessels according to the standard, under a penalty of not exceeding *thirty shillings*, with the costs of conviction, and the forfeiture of the illegal measure. This penalty must be recovered before *two* justices, and within *thirty days* after the offence.

Persons licenced, who permit drunkenness or disorderly conduct in their houses or premises, or who transgress, or permit the transgression, of the conditions enumerated in their licenses, are deemed guilty of disorderly conduct, and incur a penalty of not more than *five pounds*, nor less than *forty shillings*, for a *first offence:* for a *second offence*, any sum not exceeding *ten pounds*, nor less than *five pounds:* and, for a *third offence*, any sum not exceeding *fifty pounds*, nor less than *twenty pounds*. And the two justices before whom the *third* conviction takes place, if they think fit, may adjudge the offender to be disqualified from selling beer, &c. by retail for the ensuing two years; and that no beer shall be sold by *any other person* in the premises specified by the licence of the offender.

Persons licensed who knowingly sell any beer made otherwise than from malt and hops; or who mix drugs, or other pernicious ingredients, with the beer; or who fraudulently dilute, or in any way adulterate such beer, &c.; incur a penalty for the *first offence*, of not less than *ten pounds*, nor more than *twenty:* for a *second offence*

they are to be disqualified from selling beer, &c. for *two years*, or forfeit not less than *twenty pounds*, nor more than *fifty*, as two justices may think fit. And if the offender, after being disqualified for two years, shall sell beer *in any place*, he shall forfeit not less than *twenty-five pounds*, nor more than *fifty*, for every transgression. And any person who shall knowingly sell beer in any place prohibited by the magistrates, shall forfeit not exceeding *twenty pounds*, nor less than *ten pounds*.

Penalties, except where otherwise specified, to be recoverable within *three months;* and if not paid within *seven days* after conviction are recoverable by distress. Witnesses not attending according to their summonses incur a penalty of *ten pounds;* but no summons or order issued by any magistrate shall be deemed to be legally served, unless it shall be served by some constable, special constable, police, or other peace officer.

CIDER AND PERRY.

Licences for which a duty of *one guinea* is charged, may be obtained of the excise for the retail sale of cider and perry; the parties licensed being subject to the same regulations as for the sale of beer. But although persons who are licensed to sell beer may *also* sell cider and perry *without* a separate licence, the parties who are only licensed to sell cider *cannot sell beer* without a licence for that purpose.

Covenants in any lease, or contract between landlord and tenants, in which the business of a victualler or publican is prohibited, extends to premises in which beer, &c. is retailed under the statutes.

The following is the form of Licence :—

"We the undersigned, being of the commissioners of excise, [*or*, I, the undersigned, being a person authorized and employed by the commissioners of excise to grant licences for selling beer, ale, and porter [*or*, cider and perry, *as the case may require*,] by retail, *or* being a collector or supervisor of excise, for the collection or district of] do hereby authorize and empower A. L. now being a householder, and dwelling in a house in [*here specify the street*, &c.] in the parish [*or* township, &c.] of within the limits of the chief office of excise, [*or*,

within the limits of the said collection or district,] to sell beer, ale, and porter, [*or*, cider and perry,] by retail, in order that it may be consumed in the dwelling-house of the said A. L. and in the premises thereunto belonging, the said A. L. having duly entered into a bond with D. S. of , and E. S. of , as his [*or* her] surety, [*or*, sureties,] and having deposited a certificate signed by six persons, videlicet, [*here set out the names and residences of the persons signing the certificate*,] and by C. D. the overseer of the said parish [*or*, township, &c.] according to the statute in such case made: provided and upon condition that the said A. L. do not sell any beer, ale, or porter, made otherwise than from malt and hops [*omit these words in licences to retail cider and perry*]; nor mix, nor cause to be mixed, any drugs or other pernicious ingredients, in any beer, ale, or porter, [*or*, any cider or perry,] nor fraudulently dilute, deteriorate, or adulterate, any beer, ale, or porter, [*or*, any cider or perry,] nor sell any beer, ale, or porter, [*or*, any cider or perry,] knowing the same to have been fraudulently diluted, deteriorated, or adulterated; nor use in selling any beer, ale, or porter, [*or*, any cider or perry,] any measures which are not of the legal standard; nor wilfully or knowingly permit any drunkenness, or any violent or quarrelsome, or other disorderly conduct in his [*or*, her] house or premises; nor knowingly suffer any unlawful games, or any gaming whatsoever, therein; nor knowingly permit or suffer persons of notoriously bad character to assemble and meet together therein, but do maintain good rule and order therein; nor have or keep his [*or*, her] house and premises open for the sale of beer, ale, or porter [*or*, cider or perry] nor sell any beer, ale, or porter, [*or*, cider or perry,] nor suffer the same to be drank or consumed in or at such house or premises at any time which by any order of the justices of the peace made in pursuance of an act passed in the fifth year of his present majesty's reign, intituled, *An Act to amend an act passed in the first year of his present majesty, to permit the general sale of beer and cider by retail in* England, shall be declared to be unlawful; or at any time before the hour of one in the afternoon, or between the hours of three and five in the afternoon, or after ten o'clock in the evening on any Sunday, Good Friday, Christmas Day, or any day appointed for a public fast and thanksgiving; and [*in cases where the licence shall be granted for beer or cider to be*

consumed on the premises,] all provisions for billeting* officers and soldiers in victualling houses, contained in any act for punishing mutiny and desertion, and for the better payment of the army and their quarters, are to extend and apply to the house and premises mentioned in this licence; and this licence shall continue in force from the day of next, until the day of then next ensuing; provided and upon condition that the said A. L. shall not in the mean time become a sheriff's officer, or officer for executing the process of any court of justice; nor shall the said A. L. in the meantime cease to be rated to the relief of the poor in respect of the said house and premises; and this licence shall cease and determine, and shall become void, in case any of the conditions or regulations contained therein shall be transgressed, or shall not be observed by the said A. L.

"Given under our hands and seals, [*or*, my hand and seal,] this day of one thousand eight hundred and , at ."

JURIES.

THE trial by jury is now regulated upon the provisions of an Act of 6 Geo. IV. c. 50, intituled, "An Act for Consolidating and Amending the Laws relative to Jurors and Juries." Previous to the passing of this statute, some very gross abuses had crept into the jury system,

* BILLETING.—The Act 11 Geo. IV. cap. 7, sec. 53, provides that an innholder, or other person, on whom any soldier is billeted in England, shall, if required by such soldier, furnish him for every day on the march, and for a period not exceeding two days, when halted at any intermediate place upon the march, and for the day of arrival at the place of final destination, with one hot meal in each day, not exceeding one pound and a quarter of meat before cooked, one pound of bread, one pound of potatoes, or other vegetables, and two pints of small beer, with vinegar, salt, and pepper, for which the sum of tenpence is to be paid; the soldiers are further to be allowed candles, fire, and utensils for cooking provisions, for which one halfpenny per day is to be paid; and tenpence per day is further allowed for hay and straw for each horse.

N. B. The right of billeting does not extend to houses where the beer, &c. is not consumed on the premises.

particularly in the case of special juries, which have been for the most part removed, and the fair and independent discharge of the judicial functions considerably facilitated.

LISTS OF THE JURY.

By this statute churchwardens and overseers of the poor are required, before the 1st of September in each year, to make out alphabetical lists of the persons residing in the respective parishes, &c. who are qualified to serve on juries, their christian and surname, their place of abode, title, profession, or business, with the qualification of each.

On the three first Sundays in September, copies of such lists are to be affixed on the principal door of every church, chapel, or other place of public worship, with a notice, that appeals will be heard at the petty sessions, held annually within the last seven days of September for the district or place. And, for the better correction of such lists, the churchwardens, &c. between the 1st of July and the 1st of October, may apply to the collector or assessor of taxes, or other public officer, for the inspection of any duplicate or assessment, and take the names of jurors from thence accordingly.

The original list so prepared is to be kept by the clerk of the peace, and a copy made in a book, which is to be delivered to the sheriff, and called "The Jurors' Book." This book may then be used for one year, commencing the 1st of January. Every sheriff must deliver this book to his successor; and from it the sheriffs, coroners, and other officers, are to select the names of the jurors.

Officers neglecting or refusing to discharge their respective duties in the formation of these jury-lists, are liable to penalties.

QUALIFICATION.

The following persons are now generally qualified to serve on juries, for the trial of all issues, civil and criminal, in the king's courts at Westminster, and at the assizes; and on grand and petty juries in the courts and sessions of the peace, in the county, riding, or division where they reside.

1. Persons in *England*, between the age of twenty-one and sixty years, having, in their own names, or in trust, £10 per annum of clear yearly income arising from lands and tenements, whether freehold, copyhold, customary

tenure, or ancient demesne; or rents issuing thereout, in fee simple, fee tail, either for their own or other person's life; or such income or rents jointly issuing, amounting together to the sum of ten pounds.

2. Persons having £20 a year clear from lands or tenements held *by lease*, for twenty-one years or upwards, or for any term determinable on any life or lives.

3. Householders assessed to the poor rate, or to the inhabited house duty in the county of Middlesex, on a value of £30, or in any other county on the value of £20.

Persons occupying houses containing not less than fifteen windows.

Persons residing in Wales are eligible to serve on juries who are qualified to the extent of only three-fifths of any of the foregoing qualifications.

EXEMPTIONS.

Peers, judges, counsellors, attorneys, proctors, coroners, gaolers, and keepers of houses of correction; clergymen, in holy orders; Roman Catholic priests, having taken the oath required by law; dissenting ministers, whose places of worship are registered, and who follow no secular occupation, except that of schoolmaster; officers of the army and navy, on full pay; physicians, surgeons, and apothecaries, duly licensed and actually practising; servants of the royal household; pilots licensed, and masters in the buoy or light service; officers in the customs and excise; officers of courts of justice; sheriffs' officers, high constables, and parish clerks; are exempt from serving upon juries.

Members of the House of Commons are privileged from serving on juries while attending their duties in parliament.

No man not being a natural born subject is qualified to serve on juries or inquests except in the case of aliens, who are entitled to have half their juries composed of aliens in criminal cases; nor any person convicted of any infamous crime, unless he have obtained a free pardon; nor any man while under sentence of outlawry or excommunication.

No justice shall serve on any jury at the sessions for the jurisdiction of which he is justice.

After serving, and obtaining the sheriff's certificate, persons are free from serving again; in the counties palatine, or the principality of Wales, or in Hereford,

Cambridge, Huntingdon, or Rutland, for one year; in the county of York for four years; and in any other county except Middlesex, two years.

Sheriffs are required to register the service of jurors at the assizes, and to give certificates of service, on payment of one shilling; but this regulation does not extend to grand or special jurymen.

No one is qualified to serve on a sheriff's or coroner's inquest, upon a writ of inquiry, who is not qualified to serve on a *nisi prius* jury: but this does not extend to inquests taken *ex-officio;* nor to any city, borough, liberty, or town corporate, in which the usual method must be observed.

SUMMONING JURORS.

Every common juror must be summoned at least two days before he is required to attend; special jurors, three days before they have to attend; but this does not extend to the city of London, nor the county of Middlesex.

The panel, which is an oblong piece of parchment, must, for the trial of causes, contain the names, alphabetically arranged, with the places of abode, and additions of a competent number of jurors; which number of jurors, in any court, must not be less than forty-eight, nor more than seventy-two, unless by the direction of the judges, who are empowered to direct a greater or lesser number.

Judges may direct the sheriff to summon not more than 144 jurors to attend the assizes on their respective circuits, to serve indiscriminately on civil and criminal trials; which jurors are to be divided into two sets, one of which is to attend at the beginning, the other at the end of the assizes; the sheriffs informing each juror, in his summons, to which set he belongs, and at what time his attendance will be required.

Jurors not attending, without reasonable excuse, may be fined by the court.

A copy of the panel is to be kept in the sheriffs' office, for the inspection of the parties and their attorneys, without fee or reward.

The names of the jurors summoned, being written on tickets, are put into a box; and as each cause is called, twelve of the persons whose names are first drawn are sworn on the jury, unless absent, challenged, or excused; or unless a previous view of the subject in issue has been thought necessary; and then the jurors who have taken the view shall be sworn prior to any other jurors.

The oath of a juror is "well and truly to try the issue between the parties, and a true verdict give, according to the evidence." The same jury may try several issues, unless objected to by the judge or either parties; in which case a fresh jury is drawn from the remaining names.

CHALLENGE OF JURORS.

On the jurors' names being called, they may be challenged or objected to by the parties as improper persons. Challenges are of two kinds; namely, to the *array*, and to the *poll*.

Challenge to the array is an exception to the whole panel, on the ground of partiality, or default in the sheriff or his deputy, who arrayed the panel. Or the array may be challenged because one of the parties is an alien, and therefore entitled to a jury of one half foreigners.

Challenges to the poll are exceptions to particular individuals, and may be made on several accounts. 1. That a juror is an alien. 2. That he is not duly qualified according to the statute. 3. That he has been an arbitrator in the cause, or has received money for his verdict, or is related to, or employed by, one of the parties. 4. That he is infamous or degraded in law. Challenges may be also made to the favour, as where the party has no direct cause of challenge, but objects to some suspicious circumstance, as acquaintance or the like, the validity of which must be determined, or two indifferent persons chosen by the court. And a juror may challenge himself, on the ground of his title, office, profession, or some other of the causes of exemption before enumerated.

But an alien cannot be challenged on the trial of a foreigner for want of a freehold qualification, as, in point of law, he is not qualified to possess a freehold.

In trials of treason or felony, a juror may be challenged by the prisoner without assigning any cause. This is called a peremptory challenge; and was extended by the common law to thirty-five: but by the Jury Act, no person arraigned for murder, or felony, shall be admitted to any peremptory challenge above the number of twenty, except in cases of treason, where the prisoner is still allowed thirty-five peremptory challenges.

If, in consequence of challenges, or any other cause, a sufficient number of unexceptionable jurors do not appear at the trial, either party may pray *a tales;* which means that the sheriff may add to the names on the panel such

proper persons as are present in court, or may be first found; who remain, however, subject to the same challenges as the principal jurors.

SPECIAL JURORS.

Special jurors were originally introduced in trials at law, when the causes were supposed of too great nicety for the adjudication of ordinary freeholders; or where the sheriff was suspected of partiality, though not on such valid ground as to warrant an exception to him. Either party is entitled, upon motion in court, to have a special jury, in the trial of any cause, whether civil or criminal, or any penal statute, excepting only indictments for treason and felony; the party demanding the special jury paying the extra fees and expenses, unless the judge shall certify on the record that the cause required such special jury.

By the Jury Act, every man described in the jurors' book as an esquire, or person of higher degree, or as a banker or merchant, is qualified to serve on special juries; and the sheriff is bound to enter all such persons in alphabetical order, in a separate list, subjoined to the jurors' book, to be called "The Special Jurors' List," and shall prefix to every name its proper number, in regular arithmetical series, which numbers, marked on tickets, shall be put in a box.

When a special jury is awarded, the parties, with their attorneys, if they choose to attend, wait on the proper officer, who, having shaken the numbers in the box together, draws out forty-eight of the numbers, one after another, referring each number as drawn to the corresponding number in the special jurors' list, and reading aloud the name designated by such number. If either party, or his attorney, object to the name drawn as incapacitated, and prove the same to the satisfaction of the officer, the name may be set aside, and another number drawn; and so on till the number of forty-eight is completed. But if forty-eight names cannot be obtained from the special jurors' list, the officer shall fairly and indifferently take such number of names of the common jurors' list as will make up the full forty-eight. The officer then furnishes a list of names, places of abode, and additions of the jurors, to each party, who respectively strike off twelve, and the remaining twenty-four are returned upon the panel, the cause being tried by the twelve who first answer in court.

If any of the special jurors are absent on the trial, the talesman, to complete the number, must be taken from the common jury panel; but no tales can be prayed where all the special are absent.

The old method of nominating a special jury may be followed by the mutual consent of the parties.

Special jurors may receive such a sum of money as the judge shall think reasonable, not exceeding one guinea each, except in causes where a view is directed; and all fees heretofore taken are continued by the new Act.

A rule for a special jury must be served sufficiently early to enable the opposite party to strike the jury before the day of trial.

The same special jury, by consent of parties, may try any number of causes. But the court, on application from any man who has served, may discharge him from serving upon any other special jury during the same assize or session.

LONDON AND MIDDLESEX JURIES.

In London and Westminster, every householder, or occupier of a shop, warehouse, counting-house, chambers, or office, for the purpose of trade, having lands, tenements, or personal estate of the value of £100, is qualified to serve on juries.

The list of qualified persons residing in each ward of the city of London, must be made out, with the proper quality or addition, and the place of abode of each man, by the parties hitherto accustomed to make out such lists; the shop, warehouse, counting-house, chambers, or office of each person so qualified, to be deemed the place of abode for the purposes of the act.

Six days are allowed between summons and appearance in London and Middlesex.

The sheriff of the city of London cannot return any juror to serve in the courts of Westminster.

Owing to the small numbers of freeholders in the county of Middlesex, and the frequent occasions for juries at Westminster, in the county, it was enacted, by 4 Geo. II. c. 9, that a leaseholder, for any number of years, if the improved annual value of his lease be £50 above all ground rents and other reservations, shall be liable to serve on juries for that county.

By a previous statute, confirmed by the Jury Act, the inhabitants of Westminster are exempted from serving on

any jury at the sessions of the peace for the county of Middlesex.

Persons summoned to serve on juries in any of the inferior courts of record in London, or in any other liberty, city, borough, or town, not attending, shall forfeit not more than 40*s*. nor less than 20*s*. unless the court be satisfied with the cause of absence. Such fine is leviable by distress and sale.

No cause can be tried by a special jury in London or Middlesex, unless the rule for such special jury be served, and the cause marked in the marshal's book as a special jury cause, on or before the day preceding the adjournment-day, in Middlesex or London respectively.—*Reg. Gen.* H. T. 44.

In the Common Pleas, the rule must be served, and the cause marked in the marshal's book, two days preceding the adjournment-day.—4 *Taunton*, 601.

No person is liable to serve on juries at any session of *nisi prius*, or gaol delivery, in Middlesex, who has the sheriff's certificate of service at either of such sessions for either of the two terms or vacations next preceding.

DUTIES OF JURORS.

After a juror is sworn, he must not go from the box till the evidence is given, for any cause whatever, without leave of the court; and, with leave, he must have a keeper with him.

If, after they have withdrawn from the box to consider their verdict, they have meat, drink, fire, or candle, without consent of the court, and before verdict, they are finable; and if at the charge of him for whom they afterwards find a verdict, it will set the verdict aside. If they speak with either of the parties, or their agents, after they retire from the box; or, if to prevent dispute, they cast lots for whom they shall find a verdict: any of those circumstances will vitiate their verdict, and they are finable.

When the jury have left the box, no new evidence can be adduced, nor can they recal a witness, and make him repeat his evidence; for though he give no more evidence than he had given in court, the verdict will not be allowed (*Cro. Eliz.* 189). But they may have a witness recalled to repeat his evidence in open court.

The jury cannot retire with any writing not given in evidence in open court.

The jury are allowed to judge of the meaning of *mercantile phrases*, in the letters of merchants.—*Lucas* v. *Groaning*, 7 *Taunt.* 164.

If, after the charge and evidence given on a capital offence, one of the jurors become suddenly ill, the court may discharge the jury, and charge a fresh one with the prisoner, and convict him.—*King* v. *Edwards*, 4 *Taunt.* 309.

When a criminal trial runs such a length as it cannot be concluded in one day, the court, by its own authority, may adjourn till the next morning; but the jury must be somewhere kept together, that they may have no communication but with each other (6 T. R. 527). In civil cases a jury may separate before the judge has summed up, but not afterwards.—2 *Bar. & Ald.* 462.

If the jury do not agree in their verdict, in cases of life and limb, before the judges are about to leave the town, they are not to be threatened or imprisoned, and the judges are not bound to wait for them, but may carry the jury round the circuit, to the limits of the county.

A verdict may be either general or special. A *general* verdict is absolute and without reserve, both as to the question of law and fact, either for the plaintiff or defendant. A *special* verdict simply specifies the facts as they find them to be proved, reserving the question of law for the adjudication of the court.

A special verdict may be found both in civil and criminal cases.

The minutes of a special verdict must be approved by the judge, and ought to be signed by one of the counsel of both parties.

EVIDENCE.

Evidence is used in law for some proof, by writing or testimony, of witnesses, on oath; and it is called evidence because the question at issue is thereby to be made evident to the jury. Written proofs consist of records, ancient deeds, and wills of thirty years' standing, which prove themselves; but modern deeds and other writings must be attested and verified by the parol testimony of witnesses.

One general rule in all trials is, that the best evidence the nature of the case will admit of shall always be required, if possible to be had; but if not possible, then the next best evidence that can be had shall be procured; for if it be found that there is any better evidence existing than that produced, the not producing it affords a pre-

sumption that it would have detected some falsehood that is concealed.

Thus, in order to prove a lease for years, nothing shall be admitted but the deed of lease itself; but if that be positively proved to be destroyed or lost, then an attested copy may be produced, or parol evidence be given of its contents. So no evidence of a discourse with another will be admitted, but the party himself must be brought forward; yet, in some cases, the court allows hearsay evidence to be adduced, as in proof of any general custom or tradition, or of what deceased persons have declared in their life-time. But the bare recital of a fact, that is, the mere oral assertion or written entry, by an individual, that a particular fact is true, cannot be received in evidence. This objection does not apply to any public documents made under lawful authority; such as gazettes, proclamations, public surveys, records, and other memorials of a similar description.

Books of accounts, or shop-books, are not allowed of themselves to be given in evidence for the owner, but a servant who made the entry may have recourse to them to refresh his memory; and if the servant who was accustomed to make entries be dead, and his hand-writing be proved, the book may be read in evidence: for, as tradesmen are often under the necessity of giving credit without any note or writing, this therefore, when accompanied with such other collateral proof of fairness and regularity, is the best evidence that can then be procured.

But as evidence of this kind would be much too hard upon the buyer at any long distance of time, the law confines this sort of proof to such transactions as have happened within one year before the action brought, unless in transactions between merchant and merchant, in the usual course of trade. In order to avoid the expense, and the delay or failure of justice by reason of variances between writings produced in evidence and the setting forth thereof on the record, it is provided, by the 9 Geo. IV. c. 15, that when such variances shall appear between written and printed evidence and the record, the court pending the trial of any civil action, or in any indictment, or any information for any misdemeanor, in England or Ireland, may order the record to be forthwith amended by the proper officer, on payment of costs, and the trial proceed as if no such variance had appeared.

A second description of evidence is that by *witnesses*.

All witnesses, of whatever religion or country, that

have the use of their reason, are to be received and examined, except such as are infamous or interested in the event of the cause. All others are competent witnesses, though the jury, from after circumstances, will judge of their credibility.

Infamous persons are such as may be challenged as jurors, on account of some delinquency, as treason, felony, forgery, or perjury; but by 9 Geo. IV. c. 40, persons who have suffered the punishment of any felony, not capital, or of any misdemeanor (perjury excepted) are afterwards competent to give evidence. Interested persons may be examined upon a *voir dire*, if suspected to be secretly concerned in the issue, or their interest may be proved in court.

It is a principle of law that no man is to be examined to prove his own infamy; but a witness may be examined with regard to his own infamy, where it does not subject him to future punishment; as a witness may be asked if he has not stood in the pillory for perjury (4 T.R. 440). And by 46 Geo. III. c. 37, it is declared that a witness shall not refuse to answer a question relevant to the matter in issue, on the ground that it may tend to establish a debt, or subject him to a civil suit. But it is clear a man is not bound to answer any questions, either in a court of law or equity, which may tend to criminate himself, or which may render him liable to a future penalty.

No counsel, attorney, or other person entrusted with the secrets of the cause by the party, shall be compelled to give evidence of such conversation, or matter of privacy, as came to his knowledge by virtue of such trust and confidence; but he may be examined as to mere matter of fact, as the execution of a deed or the like, which may have come to his knowledge without his being entrusted with the cause.

One credible witness is sufficient evidence to a jury of any single fact; though the concurrence of two or more corroborates the proof. But the law considers that there are many transactions to which only one person is privy, and therefore requires the testimony of no more. But in cases of high treason, petit treason, misprision of treason, and some other offences against the crown, *two* lawful witnesses are required to convict a prisoner, unless he shall willingly confess the same in open court.

To endeavour to dissuade a witness from giving evidence, is punishable by fine and imprisonment.

By 1 Wm. IV. c. 22, in all actions, the courts of Westminster, Durham, and Lancaster, may order the

examination of witnesses on oath, or interrogatories, or otherwise, within the jurisdiction, by an officer of the court; or may issue a commission for that purpose for the examination of witnesses out of their jurisdiction. Witnesses not attending, or refusing to produce documents, are guilty of a contempt of court.

By 7 Geo. IV. c. 64, all persons appearing upon recognizance, or subpœna, to give evidence in prosecutions for felony, either before the examining magistrate, the grand jury, or on the trial, are entitled to their expenses and a compensation for loss of time, and this, although no bill of indictment be preferred. The same provision extends to cases of misdemeanor, with the exception that no allowance is made for attending the examining magistrate.

When subpœnaed, witnesses must appear at the trial, on the pain of forfeiting £100 to the king, and £10 to the party aggrieved, with damages equivalent to the loss sustained by their want of evidence: but no witness is bound to attend, except his expenses are first tendered to him, unless he reside within the bills of mortality, and is summoned to give evidence within the same.

The oath administered to the witness is not only that which he shall depose is true, but that he shall also depose the whole truth; so that he is not to conceal any part of what he knows, whether interrogated particularly on that point or not.

A Mahometan may be sworn upon the Alcoran, and a Gentoo according to the custom of India: but a person who denies, or has no notion of a God, or a future state of reward and punishment, is not deemed competent to be a witness. Under 9 Geo. IV. c. 32, Quakers or Moravians may, instead of an oath, make their solemn affirmation in the following form: "I, A. B. do solemnly, sincerely, and truly declare and affirm;" which is equally valid in civil or criminal cases, and wilfully and falsely making such affirmation, is punishable as perjury.

If witnesses remain in court after an order to withdraw on both sides, it is discretionary with the judge whether he will examine them or not. In the *Exchequer*, witnesses so remaining are peremptorily excluded.

All evidence must be given in open court, each party being at liberty to object to its admissibility for the decision of the judge.

PROPRIETORS OF STAGE & HACKNEY COACHES, DRIVERS, & GUARDS.

By 2 & 3 Wm. IV. c. 120, a stage carriage is defined to be any carriage used for conveying passengers for hire to or from any place in Great Britain, which travels at the rate of three miles or more an hour, and each passenger is charged a *separate* fare: such definition not to apply to carriages used on railways, or impelled by steam, or otherwise than animal power.

Persons applying for a stage-carriage licence to sign a requisition, specifying the name and place of abode of each proprietor; penalty for omitting the name of any proprietor, £10, and inserting false name a misdemeanor. Licences to be renewed annually. Penalty for false account of journeys performed, £50. Refusing or neglecting for five days to deliver up defaced plates, £20. Using a stage carriage without licence, or without the proper number of plates, or not delivering up defaced plates within one week after being recalled, £20. *Plying for hire* without plates, £10 on the driver; or if also owner, £20; persons so offending may be apprehended by an officer of stamps or constable, and the carriage seized. Licensed carriages may ply for hire, and take up and set down passengers, without liability to the hackney coach act. Plates unlawfully detained may be seized, and obstructing officers in seizing them, £20.

Carrying greater number of passengers than allowed by licence, for each, £5. Children in the lap, or one child under seven years of age, not reckoned; two children not in the lap, though under seven, to count as one passenger. In words at length, and in letters one inch in height, and in a colour different from the ground, must be painted the Christian and surname of at least *one* proprietor, and the names of the extreme places to and from which a carriage is licensed to travel; also on the back of the carriage, the number of inside or outside passengers allowed to be carried: penalty for omission, or suffering any of the said particulars to be defaced or obliterated, £5.

The 3 & 4 Wm. IV. c. 48, enacts, that "any licensed stage carriage with four wheels or more, the top or roof being not more than eight feet and nine inches from the ground, and the bearing of which on the ground shall not

be less than four feet six inches from the centre of the track of the right off wheel to the centre of the track of the left or near wheel, if such carriage shall be licensed to carry any number not more than nine passengers, shall be allowed to carry not more than five of such passengers outside; and if licensed to carry more than nine and not more than twelve passengers, shall be allowed to carry not more than eight of such passengers outside; and if licensed to carry more than twelve and not more than fifteen passengers, shall be allowed to carry not more than eleven of such passengers outside; and if licensed to carry more than fifteen and not more than eighteen passengers, shall be allowed to carry not more than twelve of such passengers outside; and if licensed to carry any greater number than eighteen passengers, shall be allowed to carry not more than two additional passengers outside for every three additional passengers which such carriage shall be so licensed to carry in the whole; provided that in no case a greater number of passengers shall be carried on the outside of any stage carriage than the licence relating thereto shall authorize to be carried on the outside thereof; and if any greater number of outside passengers shall be carried by any stage carriage than is herein before specified and allowed, or if any outside passenger shall be carried by any stage carriage not expressly licensed to carry any outside passenger, the driver of such stage carriage at the time when such offence shall be committed shall forfeit £5."

No person allowed to sit on the luggage placed on the roof, nor more than one person on the box with the driver, under a penalty of £5. Neither driver nor guard counted in number of passengers.

Luggage carried on the top of a carriage drawn by four or more horses, not to exceed ten feet nine inches in height from the ground; luggage carried on the top of a carriage drawn by two or three horses only, not to exceed ten feet three inches in height, measured from the ground to the highest point of any part of the luggage. Justices, road surveyors, constables, stamp officers, and passengers, authorized to cause carriages and luggage to be measured, and number of passengers to be counted; and may require a toll-gate keeper to count passengers and measure the luggage, and sign a memorandum thereof. Penalty on proprietor, driver, or toll-gate keeper refusing, £5. These provisions not to extend to *mail* coaches, 2 & 3 Wm. IV. c. 120, s. 46.

PENALTIES ON DRIVERS AND GUARDS.

If the *driver* of any stage carriage drawn by three or more horses, quit the box without delivering the reins to a proper person, or a person being placed at the horses' heads; or permit any person to drive; or quit the box without reasonable cause and for a reasonable time; or suffer any plate to be concealed, so as not to be distinctly legible; or if the *guard* discharge fire arms unnecessarily; or if driver or guard neglect to take care of the luggage, or ask more than the proper fare; or neglect to account to employer for monies received; or assault or use abusive language to any person travelling, or about to travel, or having travelled as passenger, or any person attending on or accompanying such passenger: in each of these cases the offender to forfeit £5.

If the driver or guard, or any person employed about the carriage, through intoxication, negligence, wanton or furious driving, or any other misconduct, endanger passengers or their property, or the profits of the owner of the carriage, to forfeit £5. Owners are liable for penalties, where the driver or guard is not known or cannot be found.

The following are the licence and mileage duties payable by the keepers of stage coaches:—

	£	s.	d.
Yearly licence for every carriage	5	0	0
Supplemental licence	0	1	0
For every mile, according to the number of passengers the carriage is licensed to carry, if			
Not more than four passengers, duty per mile	0	0	1
More than four, and not exceeding six	0	0	1½
More than six, and not exceeding nine	0	0	2
More than nine, and not exceeding twelve	0	0	2½
More than twelve, and not exceeding fifteen	0	0	3
More than fifteen, and not exceeding eighteen	0	0	3½
More than eighteen, and not exceeding twenty-one ...	0	0	4

If licensed to carry more than twenty-one passengers, one halfpenny per mile for every three additional passengers.

The proprietors of *railways*, on which are carriages impelled by steam, are charged after the rate of one halfpenny per mile for every four passengers so conveyed.

HACKNEY COACHES IN THE METROPOLIS.

An Act passed in the session of 1831, the 1 & 2 Wm. IV. c. 22, to consolidate and amend the laws relating to *hackney*

carriages, waggons, carts, and drays, used in the metropolis, and to place the collection of the duties thereon, and on hawkers and pedlars, under the commissioners of stamps. Under the new act, every carriage with two or more wheels, used for the purpose of plying for hire at any place within five miles of the General Post-Office, whatever be its form, or the number of persons it will convey, or the number of horses by which it is drawn, is deemed a "hackney carriage;" but this description not to include licensed stage coaches plying for hire at *separate* fares.

For every licence a duty of £5 to be paid; and weekly, during the continuance of the same, 10*s*. No licences to be granted to persons under 21 years of age, nor to any person convicted of felony, or of receiving stolen goods; and any one whose licence has been revoked may be refused a licence. Applicants for licences to subscribe a requisition proposed by commissioners; and making any untrue declaration, subjects to a penalty of £10. Proprietors changing their abode without notice to commissioners, to forfeit 40*s*. All hackney coaches to have four plates, namely, on the back, each side, and inside; to contain the name and address of the proprietor. Names and places of abode of proprietors, and number of plates, to be registered at Guildhall in the city, under a penalty of 40*s*. The weekly duty of 10*s*. to be paid on the first Monday of every calendar month. Plates to be delivered up on the discontinuance or revocation of licence, under a penalty of £10. Carriages, horses, harness, and other articles, may be seized for duties and penalties incurred. Concealing plates, or preventing persons inspecting and taking number thereof, a penalty of £5. Penalty of £10 for keeping or using a hackney carriage without licence or without plate, or not delivering up the plate when recalled. Penalty on the driver of a carriage plying for hire without plate, £5, or if the owner, £10. Forging the stamp-office plate a misdemeanor, subjecting to fine and imprisonment. Upon complaint before a justice, the proprietor may be summoned to produce the driver; and failing so to do, subjects to a penalty of 40*s*. *Watermen*, or assistants to drivers of hackney carriages at the standings, to wear badges and be licensed; penalty for acting without, 40*s*. Attempting to procure licence in a fictitious name, fine and imprisonment.

Drivers (without reasonable excuse) compellable to drive five miles from the place where hired, or from the Post Office, under a penalty of 40*s*. Penalty for refusing

a fare, if unhired, 40*s*. Drivers may ply on Sundays, subject to the same liabilities as other days. Persons refusing to pay the driver, or compensate him for loss of time in summoning, or for damage caused to his carriage, may be imprisoned one calendar month. Drivers refusing to go, or exacting more than the legal fare, or not travelling with due expedition, subject to a penalty of 40*s*. Agreements to pay more than legal fare not binding; any excess may be recovered, and the driver fined 40*s*. for extortion. For a stated sum, the driver may agree to drive any distance at discretion, and is liable to a penalty of 40*s*. for demanding more, though less than the legal fare. Number of persons to be carried to be painted on the carriage, under a penalty of 40*s*. Deposit to be made for carriages *waiting;* refusing to wait, or account for the deposit, or going away before the time has expired for which the deposit was made, a penalty of 40*s*. *Check-strings* to be provided, and while driving to be held by the driver, under penalty of 20*s*. Property left in a carriage to be carried to the Stamp Office, under penalty of not less than £20; if not claimed within one year, to be given to the driver. Driver not to permit any person to ride in, upon, or about any carriage, without the consent of the person hiring the same, under penalty of 20*s*. Plying or standing with carriage across any street, passage, alley, or alongside any other carriage, two in a breadth (except in Palace Yard), or within eight feet of the curb-stone; or feeding the horses in the street, except corn out of a bag, or hay from the hand; or wantonly obstructing any private coach, or other carriage; or in a forcible and clandestine manner taking the fare from any other driver; penalty on the proprietor, driver, or waterman offending, 20*s*. On every standing, a clear space of ten feet to be left between every four carriages; penalty on carriage after the fourth not observing the rule, 20*s*. Carriages left unattended at places of public resort, may be driven away by any peace officer or watchman, and the driver fined 20*s*. Endangering any person by *intoxication, wanton and furious driving;* or using abusive and insulting language, or being guilty of other rude behaviour, subjects any proprietor, driver, or waterman, to a penalty of £5, and the licence may be revoked. Justices may order compensation to drivers, &c. for loss of time in attending to answer complaints not substantiated.

The court of aldermen may appoint standing places in the city and borough for carriages, regulate the number

of carriages, the distances at which they shall stand from each other, the hours of plying for hire, and make regulations for the drivers and persons having the management of the carriages; such regulations, prior to being carried into effect, to be inserted in the *Gazette*, and two or more newspapers, and hung up for inspection in the Town Clerk's office: penalty for infringing regulations of the court, not to exceed £5.

WAGGONS, CARTS, CARS, AND DRAYS

The Christian and surname and place of abode of the owner (or if more than one owner, the principal) of every waggon, wain, cart, car, dray, and other such carriages, used in any public street or road within five miles of the Post Office, must be painted on some conspicuous place on the right or off-side, clear of the wheel, or on the right side shaft, in letters of black upon a white ground, or of white upon a black ground, of at least one inch in height, and of proportionate breadth; such letters to be renewed as often as any part of them is obliterated. Penalty for neglect £5, and any person may seize the waggon, cart, &c. not having the names painted as directed, and convey the same to a greenyard or livery stable, to await the decision of a magistrate.

Persons refusing to attend as witnesses on any complaint under the act, without reasonable excuse, to forfeit £5. Penalties may be mitigated by justices. All penalties, except such as are recovered within the city or borough (which are paid to the commissioners of sewers and informers), to be shared one moiety to the king, and the other moiety with full costs to the prosecutor. All prosecutions under the statute to be commenced within three calendar months.

For every hackney carriage drawn by two horses, for any distance not exceeding one mile, *one shilling*. For any distance exceeding one mile, after the rate of *sixpence* for every half mile, and for any fractional part of half a mile over and above any number of half miles completed.

By *time* the fare is, for not exceeding 30 minutes, 1*s.*; not exceeding 45 minutes, 1*s.* 6*d.*; not exceeding one hour, 2*s.*; and for any further time, after the rate of 6*d.* for every fifteen minutes completed, and sixpence for any fractional part of fifteen minutes.

The fares of hackney carriages drawn by *one* horse are, both by distance and time, *one third* less; so that for

the first mile they are 8*d*., for a mile and a half 1*s*., and so on.

Back fare, above the fare out, may be demanded for any carriage discharged beyond the limits of the metropolis after eight in the evening, and before five in the morning, to the nearest part of the said limits, or to the standing beyond the limits where the carriage may have been hired, at the option of the hirer.

Carriages driven into the country in the day time, and discharged at the distance of four miles beyond the limits, and not after eight in the evening, nor before five in the morning, are entitled to an additional sixpence for every mile back to the limits, or to any standing beyond the limits, where the carriage may have been hired at the option of the hirer; but no additional rate to be paid for any distance less than four miles.

N. B.—The *limits* of the metropolis comprise any place not distant more than three miles, measured from the General Post Office; being the limits within which letters are delivered by the post without additional charge.

PAWNBROKERS.

Pawn is a pledge or security for a loan of money, and which becomes forfeited unless redeemed by the repayment of the money advanced, with interest, within a period fixed by law.

Pawnbrokers trading in gold or silver plate are to take out an excise licence, and pay a duty of £5 15*s*. per annum; also, if within the bills of mortality or twopenny post, or within the cities of London or Westminster, an annual licence-duty of £15; elsewhere, £7, 10*s*. Licences expire annually on the 31st of July, and a penalty of £50 is imposed for not renewing them ten days before the time.

Every pawnbroker must cause his name, and the word "*Pawnbroker*," to be put up, in large legible characters, above the door of his shop, on pain of forfeiting £10 per week.

The *rate of interest* on pledges and other matters relative to pawnbrokers, are now regulated by 39 & 40 Geo. III. c. 99, by which the following rates are allowed.

For every pledge not exceeding 2*s.* 6*d.*, *one halfpenny* for any term not exceeding one calendar month it shall remain in pawn, and the same for every month afterwards, including the current month in which such pledge is redeemed, though such month is not expired.

	s.	d.		d.
If	5	0	shall have been lent,	1
	7	6	....	1½
	10	0	....	2
	12	6	....	2½
	15	0	....	3
	17	6	....	3½
	20	0	....	4

So on in proportion for any sum not exceeding 40*s.* If exceeding 40*s.* and not exceeding 42*s.* *eight-pence*; if exceeding 42*s.* and not exceeding £10, after the rate of *three-pence* for every 20*s.* by the calendar month, and so in proportion for every fractional sum.

For any intermediate pledge between 2*s.* 6*d.* and 40*s.* the pawnbroker may take after the rate of 4*d.* for the loan of 20*s.* per month.

Where the fraction of the sum to be paid is a *farthing*, the pawnbroker is bound to give a farthing in change for a halfpenny.

Parties may redeem within seven days after the end of the *first* month without paying any thing for the *extra* seven days, or within fourteen days on paying for one month and a half; but parties redeeming *after* the expiration of the fourteen days must pay the second month; and the like regulations are observable in every subsequent month, when the parties apply to redeem.

Pawns shall be entered in a book, with a description of the goods, the money lent, the date, name, and abode of the person pawning; and a duplicate of this entry, with the name and abode of the pawnbroker, shall be given *on a note* to the pawner.

The duplicate is given *gratis* if the sum lent is *under* 5*s.*; but if the money is *above* 5*s.* and under 10*s.* the pawnbroker may take a halfpenny; for 10*s.* and under 20*s.* one penny; 20*s.* and under £5, two-pence; £5 or more, fourpence. Upon the production of the duplicate, the pawnbroker delivers up the goods pawned.

Every pawnbroker must exhibit in his shop, in large legible characters, the rate of profit, charges on duplicates, &c.

Persons pawning goods, without the authority of the owner, shall forfeit not less than 20*s.* nor more than £5, with the full value of the goods; and, on default of payment, may be committed to the house of correction to hard labour for three months, and whipped.

Persons *forging* or *counterfeiting* duplicates, or not giving an account of themselves on offering to pawn or redeem goods, may be seized and carried before a justice; who, on conviction, may send the offenders to the house of correction for any period not exceeding three months.

Persons buying, or taking in pledge, *unfinished* goods, or linen, or apparel, entrusted to others to wash or mend, shall forfeit double the sum lent, and restore the goods. Peace officers, under a warrant, may search for such goods, and, if found, restore them to the owner.

Persons producing the duplicates shall be deemed the owners; and where duplicates or memorandums are lost, the pawnbroker shall deliver a copy, with the form of an affidavit, receiving for the same, where the goods pawned do not exceed 5*s.* *a halfpenny;* exceeding 5*s.* and not 10*s.* *one penny;* if above 10*s.* according to the rates payable for the original duplicate; the affidavit being sworn before a justice of peace, the goods may be redeemed.

All pawned goods are forfeited and may be sold at the end of ONE YEAR. Where the sum lent is above 10*s.* and not exceeding £10, they must be sold by public auction, notice of such sale being twice given, at least two days before the auction, in a public newspaper; but on a notice *in writing* in the presence of a witness from the owner of the goods *not to sell*, three months' farther time shall be allowed beyond the year for redemption.

Pictures, books, statues, philosophical instruments, china, &c. can only be sold four times in the year, namely, on the first Monday, and following days, in January, April, July, and October, in each year.

An account of the sale of pledges, above 10*s.* must be kept, and the overplus paid to the owner, if demanded, within *three years* after the sale. Penalty £10, and treble the sum lent.

Pawnbrokers cannot purchase any goods in pledge, except at auction. They cannot take pawns from persons appearing under twelve years of age, or intoxicated with liquor; they cannot buy or take in pawn the notes of other pawnbrokers; nor buy any goods before eight in the forenoon, or after eight in the evening; nor receive pawns before eight in the forenoon, nor after eight in the

evening, between Michaelmas and Lady-day, or before seven in the morning and after nine in the evening, the remainder of the year.

All forfeitures and penalties may be recovered before any justice, so that prosecutions be commenced within *twelve months.*

No fee or gratuity shall be taken for any summons or warrant relating to goods pawned.

Churchwardens and overseers, nominated by a justice, are obliged to prosecute, and any inhabitant may be a witness.

The acts for the regulation of pawnbrokers do not extend to persons lending money at £5 per cent. without further profit.

AUCTIONEERS.

Every auctioneer, on receiving a licence, must give sureties for the payment of the auction-duties; in London, himself in £1000, and two sureties in £200 each; and if in the country, himself in £500, and two sureties in £50 each.

An auctioneer who has duly paid the licence-duty is not liable, in the city of London, to the penalties for acting as a *broker*, without being admitted agreeably to 6 Anne, c. 16.

A licensed auctioneer going from town to town in a public stage-coach, and sending goods by public waggons, and selling them on commission, by retail or by auction, is a *trading person*, within the 50 Geo. III. c. 41, s. 6, and must take out a hawker's and pedlar's licence; so, likewise, a person travelling in this manner, and having packages of books, &c. sent after him by public conveyance, taking rooms at each town, and there selling such books, &c. by retail or by auction, is a trading person, within the seventh section of the same act.

Auctioneers must be well skilled in their duties; and if their employers sustain any damage through them, an action will lie. They must make amends if they sell the property for less, or in a way contrary to the instructions of their employer.

If an auctioneer pay over the produce of a sale to his employer, after receiving notice that the goods were not the property of such employer, the real owner of the goods may recover the amount from the auctioneer.

Auctioneers cannot become the purchasers of property entrusted to them to sell, at a less value than its real worth, unless they can prove that the owner was acquainted with its real value.

A warranty by an auctioneer, pursuant to instructions, as to the soundness or title of the article offered, will not bind him, except made on his *own* responsibility; but to relieve him, he must disclose the name of his employer at the time of sale.

If the owner put the price under a candlestick in the room, which is called a *dumb bidding*, and it is agreed that no bidding shall avail, if not equal to that, it was held to be an actual bidding of so much, to supersede smaller biddings at the auction.

If the owner of goods, or an estate, put up to sale by auction, employ puffers to bid for him, without declaring it, and there is only *one* real bidder, who, by means of the puffer, is induced to purchase at a high price, such purchaser shall not be compelled to complete the contract.—*Howard* v. *Castle*, 6 *T. R.* 642.

When the owner of an estate intends only to put up the estate at a certain price, and not to bid for it, in case of an advance, no previous notice of his intention need be given.

If an estate, or other property, be bought in by the owner, and proper notice was not previously given to the auctioneer of his intention to bid, the duty must be paid, however fair the transaction.

If an auctioneer neglect to take proper precautions to prevent the duty attaching, he will be liable to pay the duty himself.—*Capp* v. *Topham*, 6 *E. R.* 392.

If the vendor's title prove bad, the auction-duty will be remitted on application to the commissioners of excise, or to two justices of the peace.

Tithes are a *tenement*, within the exemption of 19 Geo. III. c. 56, and, as such, not liable to the auction-duty, under 43 Geo. III. c. 69.—*Rex* v. *Ellis*, 3 *Price*, 323.

Although the auctioneer is made liable to the payment of the auction duties, he may recover the same from the vendor; and, by a condition of the sale, the payment of the whole or part of the duty may be imposed on the buyer, who, refusing or neglecting to pay it, the bidding is void.

If an auctioneer sell an estate without sufficient authority, so that the purchaser cannot obtain the benefit of his bargain, the auctioneer will be compelled to pay all the costs and loss the buyer may have incurred.

If an auctioneer give credit to a vendee, or take a bill, or other security, for the purchase-money, it is at his own risk, and the vendor can compel him to pay the money.

An auctioneer writing the name of a purchaser in the catalogue, binds both the buyer and the seller to the bargain.

Unless an auctioneer disclose the name of his principal, an action will lie against him for damages for breach of the contract.

Goods sold remain at the risk of the seller, while any thing remains to be done by him to ascertain the price; but afterwards the property is changed by the sale, and, whether injured or destroyed by fire, or otherwise, it will be at the risk of the buyer.

If a vendor cannot make a good title, and the purchaser's money has been lying idle, the vendor must pay interest to the purchaser.—*Babington, on Auctions*, c. 5, s. 1.

An auctioneer receiving a deposit, to be paid over on the completion of the purchase, is regarded as a stakeholder, and as such is not liable for interest, even though he may have derived a profit from the use of the money. On the other hand, if the money be lost by his mode of employing it he will be liable.—1 *Barn. & Adol.* 577.

A clause is usually inserted in the conditions of sale, of forfeiture of the deposit, re-sale, and compensation for loss on re-sale; but there is no doubt that, if this condition were omitted, the vendor would be entitled to retain the deposit, and recover any damage beyond it, in case the contract was avoided by the sole default of the purchaser.

When an estate has been generally advertised for sale by auction, and is disposed of by private contract, persons attending for the purpose of becoming purchasers may recover from the seller, or, if the auctioneer will not disclose the name of his principal, then from him, the expenses of the attendance at the place of sale: hence the common precaution in the advertisement, "*unless previously sold by private contract.*"

A bidder at an auction may retract his bidding any time before the hammer is down, unless this is precluded by the conditions of sale.

STAMP DUTIES,

WHICH form so important a branch of the revenue, were first imposed in the reign of Wm. III. and include a variety of duties levied on receipts, bills and notes, licenses, indentures of apprenticeship, agreements, bonds, bills of lading, conveyances, and other legal instruments. Duties on proceedings in courts of justice, being considered a tax on justice by the 5 Geo. IV. c. 41, the stamp duties payable on proceedings in the several courts of justice, law, and equity, as well as in the admiralty and ecclesiastical courts, are repealed ; also, on bonds on replevy of goods, and on copies or extracts of wills or powers of attorney deposited in any ecclesiastical court. The 7 & 8 Geo. IV. c. 55, consolidates the Boards of Stamps in Great Britain and Ireland, and since 1827 the Commissioners of Stamps for Great Britain have acted for the United Kingdom.

By 9 Geo. IV. c. 49, various alterations are introduced into the stamp duties; among others, it is provided, that parchment or paper stamped on which any policy of mutual insurance at sea has been engrossed, printed, or written, may be stamped with *additional stamps*, if not under-written to an amount exceeding the sum warranted by the former stamp. Articles of clerkship, in any court of record in England (courts of Westminster excepted), may be stamped, on payment of the duty of £120 for admission of the parties in the courts of Westminster. Certificates to writers to the signet, or a solicitor, agent, or procurator in any of the courts of Scotland, to expire annually on the 31st of October. Certificates in the city or shire of Edinburgh to be entered with the officer of the court of session; elsewhere, with the sheriff or steward clerk: and officers refusing or neglecting to enter the certificate, to forfeit £10. Penalty for acting without a certificate, or without entering it, or for delivering in a wrong place of residence, £50, and disability to *maintain any suit or recover fees*. Certificates to conveyancers, special pleaders, and draftsmen, in England, to expire annually on the 31st of October. Plate and pawnbrokers' licenses to expire annually on the 31st of July. Penalties of £20 and £50, under 55 Geo. III. c. 100, as to receipts in Ireland, are reduced to £10. So much of 55 Geo. III. c. 100, as declared certain offences by clerks as to receipts to be misdemeanors, is repealed, and a penalty of £10 substituted.

Some other acts have been passed, making alterations in the stamp laws, the provisions of which will be noticed under the proper head in the subjoined table of stamp duties.

RECEIPTS.

				£.	s.	d.
Amounting to more than	£ 5	and under	£ 10	0	0	3
	10	......	20	0	0	6
	20	......	50	0	1	0
	50	......	100	0	1	6
	100	......	200	0	2	6
	200	......	300	0	4	0
	300	......	500	0	5	0
	500	......	1000	0	7	6
	1000	and upwards	....	0	10	0
Receipts in full of all demands			....	0	10	0

The stamp to be paid by the person giving the receipt.

INLAND BILLS AND NOTES.

						Not exceeding 2 months or 60 days after sight.			*Above 2 months or 60 days after sight.*		
If ..	£ 2	0	and not above	£ 5	5	0	1	0	0	1	6
Above	5	5	....	20	0	0	1	6	0	2	0
	20	0	....	30	0	0	2	0	0	2	6
	30	0	....	50	0	0	2	6	0	3	6
	50	0	....	100	0	0	3	6	0	4	6
	100	0	....	200	0	0	4	6	0	5	0
	200	0	....	300	0	0	5	0	0	6	0
	300	0	....	500	0	0	6	0	0	8	6
	500	0	....	1,000	0	0	8	6	0	12	6
	1,000	0	....	2,000	0	0	12	6	0	15	0
	2,000	0	....	3,000	0	0	15	0	1	5	0
	3,000	0	and upwards	....		1	5	0	1	10	0

Promissory notes from £2 to £100 inclusive, are not to be drawn payable to *bearer on demand*, except bankers' *re-issuable* notes, which require a different stamp. But notes for any sum exceeding £100 may be drawn either payable to bearer on demand, or otherwise.

FOREIGN BILLS OF EXCHANGE.

Foreign bills, drawn in, but payable out of Great Britain, if drawn singly, the same duty as inland bills.

	£	s.	d.
Foreign bills of exchange, drawn in sets, for every bill of each set, if the sum does not exceed £ 100........	0	1	6

				£.	s.	d.
Exceeding £	100	and not exceeding £	200	0	3	0
	200		500	0	4	0
	500		1000	0	5	0
	1000		2000	0	7	6
	2000		3000	0	10	0
	3000			0	15	0

ADVERTISEMENTS AND LEGAL INSTRUMENTS.

	£.	s.	d.
Advertisements in the London Gazette, or any newspaper, periodical, pamphlet, or literary work	0	2	0
Agreement, where the same shall not contain more than fifteen common law sheets	1	0	0
Above	1	15	0
And for every fifteen above the first	1	5	0
Appraisement of estate or effects, when the value does not exceed £50	0	2	6
Exceeding £ 50 and not exceeding £100	0	5	0
100 ... 200	0	10	0
200 ... 500	0	15	0
500	1	0	0
Appointment	1	15	0
And for every fifteen folios above the first	1	5	0
Apprentices' indentures, when the premium is under £30	1	0	0
Amounting to £30 and not to £ 50	2	0	0
50 ... 100	3	0	0
100 ... 200	6	0	0
200 ... 300	12	0	0
300 ... 400	20	0	0
400 ... 500	25	0	0
500 ... 600	30	0	0
600 ... 800	40	0	0
800 ... 1000	50	0	0
1000 or upwards	60	0	0
Where there is no premium, if the indenture do not contain more than 1080 words	1	0	0
If the same contain more than that quantity	1	15	0

Duplicates require the same stamps.

Parish indentures and charity indentures are exempt; and sea indentures only require a duty of 4*s*.

Clerkship indentures, in order to be admitted attorney in the courts of Westminster	120	0	0
For admission in any other Court of Record, or as writer of the signet of Scotland	60	0	0
For duplicates of such indentures	1	15	0

	£.	s.	d.
*Assignment of property, real or personal†	1	15	0
*Award in England	1	15	0
*Bargain and sale, or lease for a year, where consideration money is under £ 20	0	10	0
Where it amounts to 20 and not to £ 50	0	15	0
50 150	1	0	0
150 or upwards	1	15	0
*Bargain and sale, other than above	1	15	0
Bargain and sale, other than mortgage	5	0	0
Bill of lading for goods	0	3	0
*Bond for sums under £50	1	0	0
Exceeding £ 50 and not exceeding £ 100	1	10	0
100 200	2	0	0
200 300	3	0	0
300 500	4	0	0
500 1000	5	0	0
1000 2000	6	0	0
2000 3000	7	0	0
3000 4000	8	0	0
4000 5000	9	0	0
5000 10,000	12	0	0
10,000 15,000	15	0	0
15,000 20,000	20	0	0
20,000 or upwards	25	0	0
And for every fifteen folios above the first, a further duty of	1	0	0
Where a freehold is conveyed by feoffment, or bargain and sale enrolled, on such deed, unless accompanied with a lease and release, a further duty.			
If the consideration be under £20	0	10	0
Amounting to £ 20 and not £ 50	0	15	0
50 150	1	0	0
150 and upwards	1	15	0
But if there be both a feoffment and a bargain and sale, no further duty attaches to either.			
Bond for payment of money due on account current, if the amount is unlimited	25	0	0
Where limited, not to exceed a given sum, the duty same as bond for such given sum.			
Bond called mortgage bond	1	0	0
Bond given by direction of act of parliament, or of the commissioners of customs or excise, or by persons			

* Where any of the instruments marked with a (*) contain 2160 words or upwards, then for every entire quantity of words after the first 1080, the further progressive duty of 1*l.* 5*s.*

† Assignments on *sale* of property require the same duty as *conveyances;* and assignments by way of *security* the same duty as mortgages.

	£	s.	d.
obtaining marriage licenses, or letters of administration in England, or confirmation of testament in Scotland	1	0	0
Bond, with deposit of title deeds, intended as a security, the *same duty as a mortgage* for such a sum.			
*Bond of any kind, not otherwise charged	1	15	0
Bill of lading, for goods, &c. exported coastwise	0	3	0
—— sale, absolute, *same as conveyance.*			
——— as a security, *same as mortgage.*			
*Charter-party	1	15	0
*Composition-deed, debtors and creditors	1	15	0
Conveyance, upon the sale of lands, &c. where purchase-money is under £20	0	10	0
Amounting to £ 20 and not to £ 50	1	0	0
50 150	1	10	0
150 300	2	0	0
300 500	3	0	0
500 750	6	0	0
750 1000	9	0	0
1000 2000	12	0	0
2000 3000	25	0	0
3000 4000	35	0	0
4000 5000	45	0	0
5000 6000	55	0	0
6000 7000	65	0	0
7000 8000	75	0	0
8000 9000	85	0	0
9000 10,000	95	0	0
10,000 12,500	110	0	0
12,500 15,000	130	0	0
15,000 20,000	170	0	0
20,000 30,000	240	0	0
30,000 40,000	350	0	0
40,000 50,000	450	0	0
50,000 60,000	550	0	0
60,000 80,000	650	0	0
80,000 100,000	800	0	0
100,000, or upwards	1000	0	0
*Conveyance of any thing not otherwise charged	1	15	0

Where there are several deeds for completing the title, those not liable to the *ad valorem* duty are to be charged with the duty to which they are liable under any general or particular description.

An attested copy of agreement, bond, deed, or other instrument, for the security or use of any person being *a party* thereto, requires the same duty as the original instrument.

	£	s.	d.
An attested copy of such instrument, or of a will or codicil for persons *not parties* to the original instrument	0	1	0
And for every 720 words beyond the first 750	0	1	0
*Debenture, entitling to draw-back of custom or excise duty, or any bounty	0	5	0
*Declaration of any use or trust	1	15	0
*Deed of any kind whatever, not otherwise charged	1	15	0
Feoffment on sale of property, *same as conveyance.*			
——— by way of security, *same as mortgage.*			
——— of any other kind	1	15	0
And if it contains any letter or letters of attorney, to deliver or receive seisin, a further duty of	1	15	0
Lease, in consideration of a sum of money without a year's rent, or with a rent under £20, *same duty* as for a *conveyance.*			
Lease, without consideration money, where the rent does not amount to £ 20	1	0	0
Where it amounts to 20 and not to £ 100	1	10	0
100 200	2	0	0
200 400	3	0	0
400 600	4	0	0
600 800	5	0	0
800 1000	6	0	0
1000 and above	10	0	0
Lease, in consideration of a sum by way of fine, and also a yearly rent amounting to £20 and upwards, require both the *ad valorem* duty, for lease in consideration of fine only, and for lease in consideration of rent.			
Lease, not otherwise charged	1	15	0
Counterpart of lease, charged with a duty of not exceeding £1, the same duty as on lease.			
Counterpart of any other lease whatever	1	10	0
And every fifteen folios beyond the first	1	0	0
Lease for a year, consideration money not amounting to .... £ 20	0	10	0
Amounting to 20 and under £ 50	0	15	0
50 150	1	0	0
150 and upwards	1	15	0
And upon any other occasion	1	15	0
Legacies to husband and wife are exempt from duty.			
Stock in foreign funds, belonging to a party dying in this country, is *not* liable to *probate duty*, though administered to in this country by the executor.			
A rent charge by devise *is* subject to the legacy duty.			
Letter of license from creditors to a debtor	1	15	0

	£	s.	d.
Letter of attorney for receiving prize money	0	1	0
———————— for wages or dividends	1	0	0
*———————— of any other kind	1	10	0
License for marriage, in England, if special	5	0	0
Ditto, if not special	0	10	0
License for pawnbrokers, in metropolis, yearly	15	0	0
If in any other place, yearly	7	10	0
License for appraisers, yearly	0	10	0
License for bankers, yearly	30	0	0
License for physic, to exercise faculty of............	15	0	0
Memorial registered according to the statute for register of deeds and conveyances........................	0	10	0
And for every additional skin	0	10	0
Memorial to be registered of any deed whereby an annuity shall be granted	1	0	0
And for every additional skin	1	0	0
Mortgages, the duty is same as bonds, which see before.			
Pamphlets, containing one whole sheet, and not exceeding eight sheets in octavo, or any lesser page, or not exceeding twelve sheets in quarto, or twenty sheets in folio, for every sheet	0	3	0

By 1 Geo. IV. c. 9, periodical pamphlets, containing news, occurrences, or any remarks thereon, are subject to the same duties as newspapers, which require a fourpenny stamp on each copy.

	£	s.	d.
Passport	0	5	0
Policy of insurance on lives, where the sum is under £500	1	0	0
Amounting to £ 500 and not to £1000	2	0	0
1000 .... 3000	3	0	0
3000 .... 5000	4	0	0
5000, or upwards	5	0	0
Policy upon every building, goods, wares, &c.	0	1	0
And for every sum of £100, and so in proportion for any greater or less sum, which shall be insured from loss or damage by fire only.............	0	3	0

Fire Insurance Stamps.—To prevent injury to the revenue, the 9 Geo. IV. c. 13, provides, that in every insurance from damage by fire of detached buildings, or of goods contained in such buildings (except the implements and stock upon any one farm) in which there is a plurality of risks, each risk shall be separately valued and insured. Penalty for insuring separate subjects of risk collectively in one sum, is £100, payable by the party granting, renewing, or continuing the insurance. But

this is not to prevent separate buildings, or property lying therein, from being collectively insured, if an average clause be inserted in the policy, stipulating that in the event of any loss the insurers shall be liable to pay such proportion only of the loss as the sum insured bears to the whole collective value of the property when the fire broke out.

	£	s.	d.
Protest of any bill or note of any sum under £20....	0	2	0
Amounting to £ 20 and not to £100	0	3	0
100 .... 500	0	5	0
500, or upwards	0	10	0
Protest of any other kind	0	5	0
And for every sheet after the first, a progressive duty of	0	5	0
*Specification of any patent invention	5	0	0

Probates of wills, and letters of administration (See page 838).

	£	s.	d.
Release on sale of property the *same as conveyance.*			
——— by way of security, the *same as mortgage.*			
——— of any other kind	1	15	0
And for every fifteen folios above the first	1	0	0
Surrender on sale of property, the *same as conveyance.*			
——— by way of security, the *same as mortgage.*			
——— of any other kind.......................	1	15	0
And for every fifteen folios above the first	1	5	0
Specification of any discovery or invention	5	0	0
And for every fifteen folios above the first	1	0	0
Mortgage for securing money, the same as bond.			
——— for securing repayment of money become due on account current, amount unlimited	25	0	0
If the total amount is limited, the same duty as on mortgage for the same sum.			
On the *transfer* of a mortgage, whether the party entitled to the right of redemption be or be not a party to such transfer no further, and a *further sum* be added, the *same duty as on a mortgage* for such further sum, with a 35*s*. stamp additional.			
And for every fifteen folios above the first	1	5	0
Warrant of attorney, the *same duty* as on a *bond* for the *like sum*, except where the person giving the same shall be in *custody under arrest*, and in those cases..	1	0	0

Spoiled Stamps.—Allowances for *spoiled stamps*, or for deeds and instruments rendered *useless*, must be applied for by affidavit before a master extraordinary in chancery

within twelve calendar months; or, if the parties reside in London, or within ten miles thereof, within six calendar months. The days for claiming allowances at Somerset House, are Tuesdays and Thursdays, from twelve till two o'clock.

THE ASSESSED TAXES

INCLUDE various domestic taxes, assessed or levied on windows,* male servants, carriages, pleasure horses, and other articles of private use and luxury. The last regulations of these taxes are by the 6 Geo. IV. c. 7; the 7 Geo. IV. c. 22; the 10 Geo. IV. c. 1; the 21 Wm. IV. c. 35; the 1 & 2 Wm. IV. c. 7; and 4 & 5 Wm. IV. c. 73. The duties of receivers-general of the land and assessed taxes are transferred, by 1 & 2 Wm. IV. c. 18, to the inspectors of taxes, except one receiver-general for the London district, and such other districts as the lords of the treasury may determine.

WINDOW DUTIES.

Houses having not more than seven windows, and farm-houses belonging to farms under £200 per annum (by 4 & 5 Wm. IV. c. 73), are entirely exempt from the duty on windows. Other houses are chargeable with the following duties:—

Windows.	£	s.	d.	*Windows.*	£	s.	d.
8	0	16	6	18	4	15	3
9	1	1	0	19	5	3	9
10	1	8	0	20	5	12	3
11	1	16	3	21	6	0	6
12	2	4	9	22	6	9	0
13	2	13	3	23	6	17	6
14	3	1	9	24	7	5	9
15	3	10	0	25	7	14	3
16	3	18	6	26	8	2	9
17	4	7	0	27	8	11	0

* The house duty is repealed by 4 & 5 Wm. IV. c. 19.

Windows.	£	s.	d.
28	8	18	6
29	9	8	0
30	9	15	0
31	10	4	9
32	10	13	3
33	11	1	6
34	11	10	0
35	11	18	3
36	12	6	9
37	12	15	3
38	13	3	6
39	13	12	0
40 to 44	14	8	0
45.. 49	15	16	9
50.. 54	17	5	0
55.. 59	18	13	0
60.. 64	19	17	9
65.. 69	21	0	3
70 to 74	22	2	6
75.. 79	23	5	0
80.. 84	24	7	6
85.. 89	25	10	0
90.. 94	26	12	3
95.. 99	27	14	9
100..109	29	8	6
110..119	31	13	3
120..129	33	18	3
130..139	36	3	0
140..149	38	8	0
150..159	40	12	9
160..169	42	17	9
170..179	45	2	6
180	46	11	3
And for every window above 180	0	1	6

RULES FOR CHARGING WINDOWS.

1. The duties are charged for one year from April 5th, and are paid by the occupier.

2. Where any dwelling-house is let in different apartments, and inhabited by two or more persons, the same is charged as if such house was inhabited by one only; and the landlord or owner is deemed the occupier, and charged.

3. All sky-lights and windows, or lights, however constructed, in stair-cases, garrets, cellars, passages, and all other parts of dwelling-houses, in the exterior parts of houses, are to be charged.

4. Interior windows, receiving light from any exterior window which is regularly charged to the duty, are exempt by 6 Geo. IV. c. 7.

5. All windows exceeding 12 feet high, or 4 feet 9 inches broad, including the whole opening of the wall in which the window is fixed, is charged as two windows, unless built prior to April 5th, 1785; excepting also the windows of shops, workshops, or warehouses, and those belonging to places of public entertainment, licensed to sell wine or other liquors by retail; and excepting farm-houses, exempted by provisions respecting inhabited houses.

6. Where a partition, or a division between two or more windows fixed in one frame, is 12 inches broad, each side is charged as a distinct window.

7. Whether the kitchen, cellar, scullery, buttery, pantry, larder, bakehouse, brewhouse, or lodging-room, be within the dwelling, contiguous to, or disjoined from the same, it is equally liable as part of the house.

Exemptions.—Houses belonging to his majesty, or any of the royal family, public offices, hospitals, charity schools, and poor-houses, except such apartments as are occupied by the officers and servants, which are to be assessed as separate dwelling-houses; the windows in any room licensed for divine worship, and used for no other purpose; one glass window in a dairy or cheese-room. By 55 Geo. III. c. 104, windows in any room used wholly for the purpose of carrying on any manufacture. By 57 Geo. III. c. 25, tenements which have been formerly occupied as dwelling-houses, are not liable to the duties on houses or windows, when used for the purpose of trade only, or as warehouses, shops, or counting-houses. By 4 Geo. IV. c. 21, windows not exceeding three, in shops and warehouses, in the front and on the ground-floor of dwelling-houses, when used for exposing goods for sale. By 5 Geo. IV. c. 45, the exemptions are extended to offices or counting-houses used for the purpose of exercising any profession, vocation, business, or calling; but not to chambers in any of the inns of court, or of chancery, nor to any college or hall in either of the universities of Oxford or Cambridge. Mills, places of manufacture, or warehouses, not attached to a dwelling-house, are not liable, though a servant be appointed to watch and guard them in the night-time, provided such servant be named in a license, to be obtained from the commissioners of the district. The duties do not extend to windows stopped up with the *same materials* as the outside to which they appertain, whether in the wall or roof; but any person stopping up a window, or making one, without giving six days' notice in writing to the surveyor, is liable to the penalty of ten pounds. And no abatement for windows not stopped up before the 5th day of April preceding the assessment. Unfurnished houses, not tenanted, but merely left in charge of persons to take care of them, are exempt. Lastly, farm-houses occupied by labourers are exempt.

MALE SERVANTS* IN OR OUT OF LIVERY.

	£	s.	d.		£	s.	d.
For 1 Servant......	1	4	0	For 7 Servants	18	7	6
2 Ditto	3	2	0	8 Ditto	22	8	0
3 Ditto	5	14	0	9 Ditto	27	9	0
4 Ditto	8	14	0	10 Ditto	33	5	0
5 Ditto	12	5	0	11 Ditto	42	1	6
6 Ditto	15	9	0	12 Ditto	45	18	0

And an additional 3*l*. 16*s*. 6*d*. for every other servant.

Servants employed by any bachelor are charged, on each, an additional sum of	1	0	0
For every under gardener	0	10	0
For every clerk, book-keeper, or office-keeper, overseer or clerk to ditto (except apprentices with whom no fee, or less than 20*l*. has been paid)	1	0	0
Where more than one is employed, for each	1	10	0
For every shopman, warehouseman, or porter, whether in a wholesale or retail shop or warehouse............	1	0	0
For every traveller or rider, employed by any merchant or trader	1	10	0
And where more than one is employed, each..........	2	10	0

But traders who employ persons to travel on foot, are exempt, by 59 Geo. III. c. 11, for every male person so employed above the number of four.

For every person employed as steward, bailiff, overseer, or manager, or clerk, under a steward, bailiff, overseer, or manager	1	0	0
Every waiter (except occasional waiters)	1	10	0
For every coachman, groom, postillion, or helper, kept to be let on hire, for any period exceeding 28 days, and less than one year, each	1	5	0
Stage-coachmen and guards	1	5	0
Every person employed by any stable-keeper to take care of a race-horse..............................	1	0	0
Every person employed in the above capacities, and not being a servant to his employers, where such employer shall be chargeable to the higher duties on servants and carriages, or for more than one horse..............	1	4	0
And where not so chargeable	0	10	0

* Male servants, *under eighteen*, who have a legal settlement where they live, are exempt from duty, by 4 & 5 Wm. IV. c. 73; and *Roman Catholic* clergymen are exempt, by the same statute, from the additional duties on *bachelor's* servants.

Exemptions.—Apprentices, not exceeding two, or any apprentice bound for the term of seven years, and boys under fifteen years of age, kept by publicans for carrying out beer, and occasional waiters, are exempt. By 1 Wm. IV. c. 35, all male servants as above described, each being under the age of twenty-one, and the son of the employer, are exempt. Also, by 1 & 2 Wm. IV. c. 7, the ostler or helper of any licensed stage-coach proprietor, solely employed in the stables, is exempt.

CARRIAGES WITH TWO WHEELS.

	£.	s.	d.
When drawn by one horse	3	5	0
Drawn by two or more horses	4	10	0
For every additional body used on the same carriage	1	10	0

CARRIAGES WITH FOUR WHEELS OR MORE.

No.	For private use. £.	s.	d.	Stage coaches and post-chaise. £.	s.	d.
1	6	0	0	5	5	0
2	6	10	0	10	10	0
3	7	0	0	15	15	0
4	7	10	0	21	0	0
5	7	17	6	26	5	0
6	8	4	0	31	10	0
7	8	10	0	36	15	0
8	8	16	0	42	0	0
9	9	1	6	47	5	0
For every additional body				3	3	0
For carriages, let by coachmakers, without horses				6	0	0

By 1 Wm. IV. c. 35, for every carriage with four wheels, each wheel being of less diameter than thirty inches, where the same is drawn by a pony or ponies, mule or mules, exceeding twelve hands, and less than thirteen hands in height, £3. 5*s.* per annum; and for every carriage with four wheels, drawn by one horse, mare, gelding, or mule, £4. 10*s.* per annum.

GAME DUTY.

	£.	s.	d.
Certificate for taking or killing any game, or woodcock, snipe, quail, landrail, or coney	3	3	6
If a servant, charged to the duty on servants, and acting by deputation or appointment	1	5	0
If not a servant so charged	3	13	6

By 7 & 8 Geo. IV. c. 49, those persons who have taken out a game certificate in Great Britain, are exempt from the duty on certificates in Ireland.

By 1 & 2 Wm. IV. c. 32, persons licensed to deal in game are to take out a certificate charged with a duty of £2; but certificated persons may sell game to licensed dealers, if paying a duty of £3. 13*s*. 6*d*.

PLEASURE HORSES FOR CARRIAGES OR RIDING.*

	£.	*s.*	*d.*		£.	*s.*	*d.*
For 1 such horse....	1	8	9	For 11 horses	34	18	6
2	4	14	6	12	38	2	0
3	7	16	9	13	41	8	9
4	11	0	0	14	44	12	6
5	13	18	9	15	47	16	3
6	17	8	0	16	51	0	0
7	20	18	3	17	54	8	0
8	23	18	0	18	58	1	0
9	27	6	9	19	61	15	0
10	31	15	0	20	66	0	0

And an additional 3*l*. 6*s*. for every other horse.

	£.	*s.*	*d.*
Race horses, and horses let to hire, without post duty ..	1	8	9
Horses or mules for labour, 13 hands high	0	10	6
Waggoners' and carriers' horses	0	10	6
Butcher, for one horse, used wholly in his trade	1	8	9
For a second horse	0	10	6
Horses, not exceeding 13 hands high, used for drawing any carriage, or for riding	1	1	0

Exemptions.—Horses used wholly in husbandry, mares while kept for breeding, mules employed in carrying ore, coals, or sea-weed, and a husbandry horse occasionally ridden by any one occupying a farm of less annual value than £500, are exempt. By 1 & 2 Wm. IV. c. 7, the horses of officers in the army, allowed for the public service, are exempt; and also persons licensed by the Commissioners of Stamps are exempt from duty, or assessed for one

* Clergymen and dissenting ministers, with incomes under 120*l*. per annum, are exempt from the duty on *one* riding horse, by 4 & 5 Wm. IV. c. 73. ; Horses, &c. usually employed in agriculture, may be occasionally used for draught or let to hire, without payment of duty; and licensed postmasters may use their horses in drawing manure, fodder, &c. duty free. Horses, rode *boná fide* by bailiffs, shepherds, and herdsmen, are *exempt* from duty.

horse, used for drawing any carriage or vehicle, conveying persons for hire, not being at separate fares, or public stage coaches.

Tenants coming into occupation at Midsummer are to be discharged from a moiety of the annual assessment.

TAX ON DOGS.

	£.	s.	d.
For every greyhound	1	0	0
For every hound, pointer, setting dog, spaniel, lurcher, or terrier	0	15	0
For every other dog, where only one is kept	0	8	0
Those who keep two or more dogs, of whatever denomination (except greyhounds), for each dog	0	14	0
For every pack of hounds	36	0	0

Persons not paying king's taxes may keep one dog, if not a greyhound, hound, pointer, setting-dog, spaniel, lurcher, or terrier.

Whelps under six months old are exempt.

Composition for hounds, per annum, £36.

Dogs *bonâ fide* kept for the care of sheep are *exempt* from duty, by 4 & 5 Wm. IV. c. 73.

HORSE DEALERS.

	£.	s.	d.
Within the limits of the metropolis	25	0	0
In any other part of Great Britain	12	10	0

Dealers must deliver lists of horses kept for riding or drawing.

HAIR POWDER.

	£.	s.	d.
Wearing hair powder, each person, annually	1	3	6

Payment for two unmarried daughters exempts the rest.

ARMORIAL BEARINGS.

	£	s.	d.
Each person chargeable for any carriage	2	8	0
Without a carriage, but paying house duties	1	4	0
Every other person	0	12	0

COMPOSITION FOR ASSESSED TAXES.

By 59 Geo. III. c. 51, and subsequent Acts, persons liable to assessed taxes are allowed to compound with the commissioners for three years for the annual payment thereof, at the same rate, annually, as shall have been assessed the year preceding such composition, together with an additional annual rate of 1*s*. for every 20*s*. of the amount of their assessment. Compositions entitle the persons compounding to open additional windows, free of duty, of the same description as those before charged, and will exempt them from the regulations of assessed tax acts, except when chargeable with another dwelling-house, or for articles of a different description, or renewed.

This act is amended and continued by 4 & 5 Wm. IV. c. 54, until the 5th of April, 1840. Assessments for the year ending April 5, 1835, to remain the same amount, if compounded under the new act; and former compositions may be renewed, on the same amount, on payment of an additional duty of *five* per cent., *except* as to taxes on articles kept for trade, on which no composition is allowed. Persons *having compounded* for window tax to April 5, 1835, and persons *not then liable* to the tax, may open *additional* windows, *free* of duty: but this does not extend to *additions* to houses. Persons having compounded and reduced their establishments, may compound anew on the assessment of 1835, by giving three months' notice. The same may be done on increased establishments. Compounders, having removed to another division of commissioners, may compound therein; but no renewed composition is to extend to articles of a different description than authorised by the former composition. Compounders are not liable to the penalty of the assessed tax acts, except for *concealment* to evade assessment of duty. Persons occupying houses, or keeping articles compounded for by other persons, or set up by other persons under colour of composition, are liable to the duty; and if this be done with intent to defraud, there is a penalty of treble the amount of the duty. And persons procuring contracts for a less amount than ought to be included, the contracts are void, and the offenders forfeit £50. But any error or mistake in the compositions may be amended.

A

VOCABULARY

OF

GENERAL LAW TERMS

ABEYANCE, from the French word *beyer*, to expect, signifies that the freehold of land is not vested in any one, but stands waiting for an owner or a proprietor.

ADDITION, signifies degree, or mystery, which any person adds to his Christian and surnames; for, by 1 *Hen. V.* c. 5, all persons shall, in law proceedings, be styled by their proper name and addition.

ADNICHILED, signifies annulled, cancelled, made void.

ADVOWSON, the right of presentation to an ecclesiastical benefice.

AGE-PRIER, where an action is brought against an infant for lands by descent, and he shows his infancy to the court, and prays that the action may stay, or demur until he is of full age.

AGISTMENT, to take in or feed cattle, at a certain rate per week.

ALIMENT, legally signifies food, clothes, and habitation.

ALLODIAL, an inheritance held without any acknowledgment to any lord or superior, contradistinguished from inheritance in fee, which signifies, land held of some one.

AMENABLE, to bring or lead unto, signifies responsibility, or subjection to answer in a court of justice.

AMICUS CURIÆ, a friend of the court, who has a right to speak and offer his sentiments on a doubtful point of law.

APPORTIONMENT, the dividing of a rent into parts, as the land out of which it issues is divided amongst one or more proprietors. So, where a lessor recovers part of land, the rent shall be apportioned.

APPROPRIATION, is where tithes, glebe, or other ecclesiastical dues are appropriated to the use of a bishop, college, or other spiritual corporation. When these subjects are in the hands of a layman, they are termed a lay impropriation.

ARREST OF JUDGMENT, is to shew why judgment should be stayed, notwithstanding the verdict.

ATTACHMENT, a custom in some places abroad, and in London, where a creditor may attach the goods of his debtor wherever he finds them in the jurisdiction.

ATTORNMENT, a tenant's acknowledgment of a new landlord on change of possession.

AVERMENT, in pleading, is the positive assertion of some fact, or of having made an offer to do some act.

AUTRE DROIT, where a person acts in right of another. So, executors, administrators, &c. act in *autre droit*, that is, in right of the testator or intestate.

AUTRE FOIS ACQUIT, acquitted before, which is always a bar, or answer to a fresh indictment.

BAR, is a plea, or peremptory exception to the plaintiff's action, such as *autre fois acquit*, &c.

BASE COURT, a court that is not of record.

BENEFIT OF CLERGY, a term that implied exemption from the punishment of death, if the party could read. Now *abolished*.

BISAYEUL, the father of the grandfather; a writ so called, that lies where the great grandfather was seised, when he died, of any lands or tenements in fee-simple; and after his death a stranger enters, and keeps out the heir.

BONA NOTABILIA, where a person dies, having goods in any other diocese, besides in the diocese where he dies, amounting to five pounds.

BOROUGH ENGLISH, a tenure in some boroughs, by which the youngest son inherits from the father.

BURGAGE TENURE, is a service in some boroughs, whereby the inhabitants hold their lands or tenements of the king, or other lord, at a certain yearly rent.

BYE-LAWS, orders, or private statutes of corporations.

CALLING THE PLAINTIFF, a formal ceremony when the plaintiff is nonsuited. It is generally done by consent, when the judge tells the plaintiff he has no case for the jury; but the plaintiff may still go to the jury if he pleases.

CAPIAS AD SATISFACIENDUM (or *Ca. Sa.* as it is termed) is a writ of execution, on the record of a judgment where there is a recovery in the courts of Westminster, of debt, damages, &c. commanding the sheriff to take the body of the defendant to satisfy the verdict.

CAPTION, that part of a legal instrument, which shews where, when, and by what authority it is taken, served, or executed: the word sometimes implies an arrest.

CASUS OMISSUS, where any thing is not provided for by statute, &c.

CEPI CORPUS, a return made by the sheriff upon capias or other process, that he has taken the person of the party.

CERTIORARI, an original writ, from Chancery or the King's Bench, directing the judges or officers of the inferior courts, to certify or return the records of any cause depending before them into the superior court.

CESTUI QUE TRUST, one who has the trust of lands or tenements entrusted to him for the benefit of another.

CESTUI QUE USE, one to whose use another man is enfeoffed of lands or tenements.

CESTUI QUE VIE, one for whose life any lands or tenements are granted.

CHATTELS, any sort of personal property.

COGNOVIT ACTIONEM, where a defendant acknowledges the plaintiff's cause against him to be just and true, and suffers judgment to be entered without trial. It is generally conclusive of all points at issue.

COLLATERAL DESCENT, a side branch of a family.

COMMENDAM, an ecclesiastical benefice, void by the promotion of its incumbent to a bishopric, which the king allows him to hold as a sinecure.

CONGEABLE, a thing lawfully done, or done with legal permission.

CONTINUANDO, a word used in special declaration of trespass, when the plaintiff would recover damages for several trespasses in one action.

CONVOCATION, an assembly of the clergy, held now *pro forma.*

COPARCENERS, such as have equal shares of the inheritance of their ancestors.

CORAM NON JUDICE, a cause brought into court, of which the judges have no jurisdiction.

COVIN, a compact between two or more to deceive or prejudice others; as if a tenant for life, or in tail, conspire with another that he shall recover the land, in fee, or in prejudice to the reversion.

CURIA ADVISARE VULT, an entry made when the court take time to deliberate upon any point before they give judgment.

DE BENE ESSE, a phrase meaning something well done for the present, but when more fully examined, must stand or fall according to the merits.

DEDIMUS POTESTATEM, a writ or commission to one or more private persons, for speeding some act appertaining to a judge, or to some court. It is generally granted on a suggestion that the party who is to do the act is so weak that he cannot travel; as where a person lives in the country, to take an answer in chancery, to examine witnesses, to levy a fine, to swear in a justice of the peace, &c. &c.

DEFEASANCE, a collateral deed made with any other conveyance, containing conditions, on the performance of which the estate then created may be defeated. It also means the endorsement, containing the conditions (if any) of a warrant of attorney.

DEMESNE, the lands which a lord of a manor has in his own hands, or in the hands of his lessee.

DEODAND, whatever occasions the death of a human being, such as a cart, horse, &c. and is forfeited to the king.

DISSEISIN, is a wrongful putting out of one who is seised or possessed of a freehold.

DROITS OF THE ADMIRALTY are rights or perquisites of the Crown, and are either civil or prize. Civil droits are the proceeds of wreck, &c. Prize droits

are revenues arising from the capture of enemy's ships, ignorant of the commencement of hostility.

DUCES TECUM, a writ commanding a person to appear on a certain day in any court, and to bring such writings, evidences, or other things as the court would view.

DURESS, any thing done under compulsion.

EMBLEMENTS, the profits of lands, &c.

EASEMENT, a convenience which one neighbour derives from another, by custom, charter, or prescription; as a way through his lands, a water-course, &c.

ELEGIT, a writ of execution, by which the creditor obtains possession of a moiety of his debtor's land and all his effects, beasts of the plough excepted, which he holds until his whole debt is satisfied; and, during that time, he is *tenant by elegit*.

ENFEOFF, to invest with any dignity or possession.

ENFRANCHISEMENT, the admission of any one into a body politic or corporate.

ENTAIL, where the succession to an estate is limited on certain conditions, to certain persons.

ESCHEAT, where lands or tenements, for want of heirs, &c. fall back to the king, or the lord of the fee.

ESSOIGN. *The essoign day of term* is the first day of term on which the courts are opened, to hear essoigns or excuses of such as do not appear to the summons of the writ.

ESTOVERS, an allowance of wood made to tenants, comprehending house-bote, hedge-bote, cart-bote, plough-bote, &c.

ESTREAT. When the condition of a recognizance is broken, or forfeited by any of its conditions being broken, it is *estreated*, or extracted from the record, and sent up to the Exchequer, whence a process will issue to recover the fine.

ESTREPEMENT, any spoil or *waste* made by a tenant on lands, to the prejudice of him in reversion.

EX MERO MOTU, words in the king's charters and letters patent, to signify that he grants them *of his own will and motion*, without petition or suggestion of any other.

EX OFFICIO, a phrase used to signify the power which a person possesses, by virtue of his office, to do certain acts, as attornies general file *ex officio* informations.

EX PARTE, an act done, statement made, or proceeding had, by one party only.

EX POST FACTO, signifies something done after another thing which is matter of inquiry.

EXECUTORY DEVISE, where future interest is devised that depends on some contingency before it can become a vested interest.

EXEMPLIFICATION OF LETTERS PATENT, a copy or transcript of letters patent from the enrolment of the letters.

EXIGENT, a writ sued out on the sheriff's return of *non est inventus*, whereby the sheriff is required to cause the defendant to be proclaimed or called in five county courts successively; and if, after being so exacted, he does not appear, he is outlawed.

EXTENT, a process entitling the Crown to seize the body, lands, and goods of its debtor, and also his debts, specialties, and money.

EXTINGUISHMENT signifies a *consolidation*. Thus, if a man hath a yearly rent out of lands, and afterwards purchases the land out of which the rent issues, so that he hath as good an estate in the *land* as he hath in the *rent*; the land and rent are then consolidated or united in one possessor, and therefore the rent is said to be *extinguished*. So, also, by purchasing lands wherein a person hath common appendant, the common is extinguished.

FACULTY, is a privilege to do that which is illegal by common law. The privilege is confined to the Archbishops of Canterbury and Armagh; and extends to granting dispensations for persons to marry without banns first asked, for ordination of a deacon under age, for incumbents to hold two or more incompatible livings, &c.

FEALTY, the duty due to a lord from his tenant, in pursuance to the oath taken at his admittance to the land.

FEE, *or* **FEE-SIMPLE**, the perpetual right of holding lands or tenements. A *tenant in fee-simple* is one who holds lands or tenements to him and his heirs for ever.

FEIGNED ISSUE. If in a suit in equity any matter *of fact* be strongly contested, the court usually directs it to be tried by a jury; as, whether A is heir-at-law to B, or the existence of a *modus decimandi*, or real and immemorial composition for tithes. But, as a jury cannot be summoned to attend a court of equity, the fact is usually directed to be tried at the bar of the Court of King's Bench, or at the assizes, upon a *feigned issue*. For this purpose a feigned action is brought, wherein the pretended plaintiff declares that he had laid a wager of five pounds with the defendant, that A was heir-at-law to B, and then averring that he *is* so, brings his action to recover the five pounds. The defendant allows the wager, but avers that A is not heir-at-law to B, and thereupon the issue, which is directed out of the Court of Chancery to be tried, is joined. And thus the verdict of jurors in a court of law determines the fact in a court of equity.

FEOFFMENT, a gift or grant of manors, messuages, lands, or tenements to another in fee, to him and his heirs for ever, by delivery of seisin or possession of the thing granted.

FERÆ NATURÆ, beasts and birds of a wild nature.

FIEF, lands or tenements held in fealty and homage.

FIAT, an order or warrant for a thing to be executed.

FIERI FACIAS, a judicial writ of execution, that lies where judgment is had for debt or damages; by which writ the sheriff is commanded to levy the same on the goods and chattels of the defendant.

FINDING A BILL, is when the grand jury, on inspection of the depositions of the witnesses on whose evidence the prisoners have been committed, think the charges supported, they *find true bills* against the prisoners, on which they are brought to trial.

FINE, a penalty or pecuniary composition for an offence committed against the laws.

FIRST FRUITS, the profits due to the king as his revenue after the avoidance of every spiritual preferment above the clear yearly value of £50, according to the valuation in the king's books.

FISHERY (FREE), an exclusive right of fishing in a public stream or river.

FLOTSAM, is where a ship is sunk or cast away, and the goods are *floating* on the sea.

FORECLOSURE, a term used to express the barring of the equity of redemption on mortgage.

FORFEITING RECOGNIZANCES is where persons, bound by legal process to appear in any court, at a stated time, are admitted to bail, or become bail for others. These sureties are called recognizances, which are forfeited into the king's exchequer, in case of noncompliance with the conditions of the bailment.

GARNISHMENT. If an action of detinue of charters be brought against one, and the defendant saith that they were delivered to him by the plaintiff and another person, upon certain conditions, and prays that the other may be warned to plead with the plaintiff, the writ of *scire facias*, which goes against him, is called *garnishment;* and when he comes, he shall plead with the plaintiff, which is called *the interpleader*. This is only known in London.

GAVELKIND, a tenure or custom annexed to certain lands in Kent, whereby the lands of the father are equally divided at his death among all his sons, or the land of the brother among all the brethren, if he has no issue of his own.

GLEBE LAND, the land, messuage, or pasture belonging to a parish, of which a rector or vicar is seised in right of the church.

HALF-BLOOD, where the relationship proceeds not from the same couple of ancestors, but from only one.

HEREDITAMENTS, such immovable things which a man may leave to his heirs by way of inheritance.

HEIR-LOOMS, a kind of personal property descending to the heir by special custom, or attached to the fee by the original possessor, and cannot be devised by will.

HERBAGE AND PANNAGE. *Herbage* is green pasture, and *Pannage* food which swine feed on in the woods, as the masts of beech, acorns, &c.

HERIOT, the render of the best beast, goods, or piece of plate to the lord of the manor, as due and payable on the death of the tenant, in some cases of copyhold.

HOMAGE, the service which a tenant makes to his lord when admitted to land held in fee.

HOMESOKEN, or **HAMSOKEN**, the privilege which every man has in his own house.

IMPANELLING, the act of writing, in a parchment schedule, the names of the jury by the sheriff.

IMPARLANCE, time given by the court to a party to plead; now limited generally to one term.

INDUCTION, giving a clergymen possession of the church.

IN ESSE, any thing *in being*. Any thing not in actual being, but which may exist, is said to be *in posse*, or *in potentiâ*; but what is apparent and visible is alleged to be *in esse*, or actual being. A child, before it is born is *in posse*; after it is born it is *in esse*, or actual being.

IN FORMA PAUPERIS, where any person has just cause of suit, and is not worth five pounds after his debts are paid, excepting the property in question; on oath made of this fact, and a certificate from some counsel, that he hath good cause of action, the court will permit him to sue in *forma pauperis*, without paying any fees to counsel, attorney, or clerks in court.

INROLMENT, the registering in the rolls any deed, &c.

INTERLOCUTORY JUDGMENT is of two sorts: first, when given in a cause on some plea, proceeding on default, which is only intermediate, and does not finally determine the suit; and secondly, such incomplete judgments as merely establish a plaintiff's right, without ascertaining the amount of damages sustained by him, which is left to a jury.

INTERPLEADER, the discussion of a point incidentally happening between, before the principal case can be determined.

IN VENTRE SA MERE, where a child is not born, but of which the mother is pregnant at the death of her husband.

INUENDO, a word used in law to ascertain the *meaning* of any doubtful word or expression, by *averring* that the sense appropriated to it is the true meaning. So, in an action of slander, by speaking of A to B, "He is a traitor," it must be *averred*, under an *inuendo* in the declaration, that the pronoun *he* means the person A, and that *traitor* means that the said A had been guilty of an offence against the duty of his allegiance.

ISSUE, the stage of the proceedings when the parties come to an affirmance or denial of the points relied on; and this is called *joining issue*, when the cause is ready for trial.

JACTITATION OF MARRIAGE, where a party holds out a false pretension of marriage with another, whereby a common reputation of their marriage may ensue.

JEOFAIL, an oversight in pleading, or other law proceedings.

JOINDER IN ACTION, the coupling of two parties in one suit.

JOINT TENANTS, persons who hold lands, &c. by one title.

JOINTURE, a settlement of lands or tenements made to a woman, in consideration of marriage; or in the event of death.

JUSTICES OF ASSIZE, are judges who are sent into different counties to hold assizes.

JUSTICES OF GAOL DELIVERY, are judges sent with commission to hear and determine criminal causes.

JUSTIFYING BAIL, when the bail put in on arrest is excepted to, they, or others in their stead, swear, or justify that they are housekeepers, and each worth double the sum for which they are bail, after payment of all their debts.

KING'S BOOK, a book in which ecclesiastical benefices and preferments are certified.

LACHES, in law, are negligence, slackness, or omissions.

LATHE, a division in a county, comprising three or more hundreds.

LATITAT. Where a defendant cannot be found in the county of Middlesex to be taken by bill, this writ which has its name from a supposition that the defendant *lurks and lies hid*, or is gone into some other county, is directed to the sheriff, commanding him to apprehend him there.

LEASE AND RELEASE, a conveyance of fee simple, right, or interest, in lands or tenements, giving first the possession for a term, and afterwards the full interest in the estate conveyed.

LEVANT ET COUCHANT, terms in law for cattle which have been so long in the ground of another, that they have *lain down*, and are *risen again* to feed.

LEVARI FACIAS, a writ of execution directed to the sheriff for levying a sum of money on a man's lands and tenements, goods and chattels, who has forfeited his recognizance.

LINEAL ANCESTOR, father or grandfather in the right line.

LINEAL DESCENT, that descent which goes from father to son, and so forward, without interruption.

LIVERY OF SEISIN, &c. a delivery of the possession of lands to one who has a right to them.

LOCUS IN QUO, the place where any thing is alleged to have been done in law pleadings, &c.

MAIDEN ASSIZE, when no person receives sentence of death, or is convicted capitally.

MAIN-PRIZE, the delivery of a person into friendly custody, on giving security that he shall be forthcoming when required.

MAINOUR, the thing that a thief taketh away or stealeth; so, when it is said a thief is taken *in the mainour*, it means he is taken with the thing stolen *in his hands*.

MALA IN SE, are acts morally bad and unlawful; as, theft, murder, perjury, and the like.

MANDAMUS, a writ from the court of King's Bench, commanding an inferior court of judicature, &c. or any person in the British dominions, to do a thing therein specified.

MEDIETAS LINGUÆ. A jury *de medietate linguæ* is a jury whereof one half are foreigners; and is used in pleas, where one party is a foreigner and the other a natural subject.

MESNE, middle or intermediate. Mesne process signifies all such process as issues pending the suit, on some collateral interlocutory matter.

MITTIMUS, a writ for the removal of records from one court to another. It is, also, a precept, under the hand and seal of a justice to a gaoler, for the receiving and safely keeping of an offender till delivered by law.

MODUS, land, money, or yearly pension, given to a person in lieu of tithes in kind.

MORTMAIN, an alienation of lands and tenements to corporations, or for charitable purposes.

MORTUARY, a gift by one, at death, to a parish church, as a recompense for tithes, &c. not duly paid in his life.

MOTION IN COURT, an application to the court for some rule or order necessary in the progress of the suit.

NATURALIZATION, putting an alien in the capacity of a natural born subject, by act of parliament.

NE EXEAT REGNO, a writ to restrain a person from going out of the kingdom, without the king's license.

NIL DEBET, a plea to an action of debt when the money is said to have been paid, or is not owing.

NIL DICIT, a form of judgment against a defendant, on his failing to put in an answer by the day appointed.

NISI PRIUS, the commission to justices of assize, so called from the saving clause in the writ of distringas, whereby the sheriff is commanded to distrain the impanelled jury to appear at Westminster before the justices, at a certain day in the following term, to try the cause, "unless the justices come before that day to hold assizes," which they always do.

NOLLE PROSEQUI, an acknowledgment, whereby the plaintiff declines to prosecute his suit, as to the whole or part of the cause of action.

NON ASSUMPSIT, a plea in personal actions, whereby the plaintiff denies that any promise was made to the defendant.

NONFEASANCE, an omission of what ought to be done.

NON SUIT, a renunciation of a suit by a plaintiff or defendant, when the case cannot be carried to a conclusion.

NUDE CONTRACT, a *contract* without a consideration; it is also called *nudum pactum*, and is not binding.

ONUS PROBANDI, the burden of proving certain facts.

OUTLAWRY, the process by which a person is deprived of the benefit of the laws, and subjected to forfeiture.

OVERT ACT, an act capable of being sustained by legal proof.

OYER AND TERMINER, the commission of the judges of assize, by which they have power to hear and determine treasons, felonies, &c.

PANEL, a slip of parchment containing the names of such persons as have been returned by the sheriff as jurymen.

PARCENERS, persons holding lands in copartnership.

PAROL, by word of mouth; verbal.

PECULIAR, a parish or church having a special jurisdiction to grant administration or probate of wills, &c.

PLEA, a defendant's answer to a plaintiff.

POSSE COMITATUS, the power of the county, which includes the aid and attendance of all men above the age of fifteen, within the county. This power the sheriffs may call forth to execute the process of the law, and other acts for the furtherance of justice.

POSTEA is a term signifying the return of the judge, made upon the record, of what was done in the cause after the issue is joined.

PRÆMIUM PUDICITIÆ, a consideration given by bond to a woman by her seducer.

PRESCRIPTION, a title acquired by use and time.

PRESENTMENT, a notice taken by a grand jury, or other inquest, of any offence from their own knowledge, without indictment at the suit of the king.

PRIVIES, a term signifying the situation of those who are partakers in any action or thing. Of *privies* there are five kinds:—1. Privies in blood; as the *heirs*, whether general or special, to the *ancestor*. 2. Privies in representation; as the *executor* to the *testator*, or the *administrator* to the *intestate*. 3. Privies in estates; as joint tenants; the *donor* to the *donee;* the *lessor* to the *lessee*, &c. So, if a fine be levied, the *heirs* of him who levies it are privies. 4. Privies in contract; as when the lessee assigns all his interest. 5. Privies of estate and contract; as when the lessee assigns his interest, and the lessor has not accepted the assignee.

PROCHEIN AMY is the *next friend*, or next of kin to a child in his nonage.

PUISNE, the several judges and barons, not chiefs, are called puisne judges, puisne barons.

PUR AUTER VIE, for another person's life.

QUE ESTATE, signifies *which estate*, and is a plea where one man entitling another to land, &c. says, that the same estate such other *had*, he *has* from him. Thus; in *quare impedit*, the plaintiff may allege that two persons were seised of the lands to which the advowson was appendant in fee, and presented to the church, which afterwards became void; *which estate* of the said two persons he now has, and by virtue thereof presented, &c.

QUI TAM, an action commenced or an information exhibited on a penal statute, for the recovery of the penalty: it takes its name from the form of the declaration, in which the prosecutor declares that he prosecutes, "as well for our sovereign lord the king as himself;" *tam pro Domino rege quam pro seipso.*

QUO WARRANTO, a writ against any person or corporation, who usurp any office, &c. to inquire by what authority they claim the same.

QUOAD HOC is used to signify that, *as to the thing* named, the law is so and so, &c.

REALTY, an abbreviation for *real estate.*

RE-ASSURANCE, a contract which an insurer makes with another person, to re-assure him the same event which he himself has insured.

REBUTTER, the answer of the defendant to the rejoinder of the plaintiff.

RECOGNIZANCE, an obligation which a person enters into, with condition to appear at the assizes, to keep the peace, to pay a debt, or the like.

RECOUPE in law is used for *discount.*

RED-BOOK OF THE EXCHEQUER, an ancient record, in which are registered those who held lands, per baroniam, in the time of Henry II.

REJOINDER, the answer or exception of a defendant to the plaintiff's replication.

RELEASE, an instrument whereby estates or other things are transferred.

RELOCATION, a letting, or a renewal of a lease.

REMAINDER, an estate after another estate is determined.

REPLICATION, an exception to the defendant's plea.

REVERSION, the residue of an estate left in the grantor, returning to him, or his heirs, &c. after the term of the grant is passed.

SCILICET, an adverb, signifying *that is to say, to wit.*

SCIRE FACIAS, a judicial writ calling on a party to show cause why execution of judgment passed against a party should not be made out.

SCOT and LOT, a term including paroehial assessments for the poor, the church, lighting, cleansing, watching, &c.

SEIGNORAGE, a deduction from bullion brought to the mint to be exchanged for coin.

SEISSIN, possession; *seissin in deed* is when an actual possession is taken; *seissin in law* is a right to lands, though possession has not actually been taken.

SEVERALTY, an estate in severalty is an estate held by a person in his own right.

SOCAGE TENURE, a tenure consisting in some service, by which most free lands in England are held.

SPECIALTY, a writing under the hand and seal of the parties.

SPIRITUALITIES OF A BISHOP, are ecclesiastical profits which he receives as a bishop.

STATUTE-DUTY, the duty of inhabitants and occupiers of lands, &c. to furnish horses, &c. for repair of the highways.

SURREJOINDER, a second defence to the plaintiff's declaration.

SYNGRAPH, a deed or bond under the hand and seal of all parties.

TAIL, or FEE TAIL, an inheritance whereof a man is seised to him and the heirs of his body, begotten or to be begotten, limited at the will of the donor. *Tail general* is where lands and tenements are given to one and the heirs of his body generally. *Tenant in tail special* is where the gift is restrained to certain heirs of the donee's body, as male or female.

TESTE, witnessed.

TRAVERSE, to put off the trial to another sessions, &c.

TROVER, finding. An action of trover is an action for goods found or kept, but refused to be delivered.

VENUE, the place in which the declaration states the cause of action to have arisen, or in which a jury is summoned for the trial of causes.

VOIRE DIRE. When a witness is suspected of partiality, he may, before he is examined, be sworn on a *voire dire*, that is, to declare whether he has any interest in the matter in controversy.

WAIFS, are goods which have been stolen and waived on the thief's being pursued.

WITHERNAM is the taking or driving a distress to a hold, or out of the county, so that the sheriff cannot, upon *replevin*, make delivery thereof to the party distrained.

WRIT OF RIGHT, the last remedy for one who is injured by ouster, or privation of his freehold.

TABLE OF DUTIES OF CUSTOMS INWARDS.

A TABLE of the DUTIES and CUSTOMS payable on Goods, Wares, and Merchandize imported into the United Kingdom from Foreign Parts, and of the Drawbacks to be allowed on the Exportation of such Goods, Wares, and Merchandize.

	Duty.			Drawback.		
	£	s.	d.	£	s.	d.
ACACIA	0	2	0	0	1	4
Acetous Acid, *See* Vinegar.						
Acorns, *See* Seed.						
Acorus, the lb.	0	0	10	0	0	6
Adianthum, the lb.	0	0	8	0	0	5
Agaric, the cwt.	1	18	0	—		
Agates or Cornelians, *viz.*						
—— set, for every 100*l.* of the value	20	0	0	—		
—— not set, for every 100*l.* of the value	10	0	0	—		
—— Beads, *See* Beads						
Alkali, not being Barilla, *viz.*						
—— any article containing soda or mineral alkali, whereof mineral alkali is the most valuable part, (such alkali not being otherwise particularly charged with duty,)						
- - - - if not containing a greater proportion of such alkali than 20 per centum, the cwt.	0	11	4	0	5	8
- - - - if containing more than 20 per centum, and not exceeding 25 per centum of such alkali, the cwt.	0	15	0	0	7	6
- - - - if containing more than 25 per centum, and not exceeding 30 per centum of such alkali, the cwt.	0	18	4	0	9	2
- - - - if containing more than 30 per centum, and not exceeding 40 per centum of such alkali, the cwt.	1	3	4	0	11	8
- - - - if containing more than 40 per centum of such alkali, the cwt.	1	10	0	0	15	0
Alkanet Root, the lb.	0	0	10	0	0	6
Alkermes, Confection of, the oz.	0	1	8	—		
Almond Paste, for every 100*l.* of the value	60	0	0	—		
Almonds, *viz.*						
—— Bitter, the cwt.	1	11	8	1	8	0
—— Bitter, the produce of any British possession, the cwt.	0	15	10	0	14	0
—— Jordan, the cwt.	4	15	0	4	4	0
—— Jordan, the produce of any British possession, the cwt.	2	7	6	2	2	0
—— of any other sort, the cwt.	2	7	6	2	2	0

	Duty. £	s.	d.	Drawback. £	s.	d.
Aloes, *viz.*						
——— Hepatica or Barbadoes aloes, the lb.	0	1	3	0	0	10
——— Socotorina, the lb.	0	2	6	0	1	8
- - - - the produce of the Cape of Good Hope, and imported direct from thence, the lb.	0	0	3	0	0	2
——— of any other sort, the lb.	0	0	9	0	0	6
Alum, the cwt.	0	17	6		—	
——— Roch, the cwt.	0	11	8		—	
Amber, *viz.*						
——— Beads, *See* Beads.						
——— Oil of, *See* Oil.						
——— Rough, the lb.	0	1	8	0	1	1
——— Manufactures of Amber, not otherwise enumerated or described, the lb.	0	12	0		—	
Ambergris, *viz.*						
——— the produce of British fishing, the oz.	0	2	0		—	
——— the produce of Foreign fishing, the oz.	0	5	0		—	
Ambra Liquida, the lb.	0	3	4		—	
Anacardium, *See* Cashew Nuts.						
Anchovies, the lb. (by 10. G. 4. c. 43. only)	0	0	2		—	
Angelica, the lb. (by 10 G. 4. c. 43. only)	0	0	3	0	0	6
Annotto or Rocou, *viz.*						
——— Flag, the lb.	0	0	5		—	
——— Roll or any other sort, not otherwise enumerated or described, the lb.	0	1	0		—	
Antimony, *viz.*						
——— Crude, the cwt.	0	15	0		—	
——— Regulus of Antimony, the cwt.	2	0	0		—	
Apples, the bushel	0	4	0		—	
——— dried, the bushel (by 4 & 5 W. 4. c. 89.)	0	2	0		—	
Aquafortis, the cwt.	0	14	3		—	
Arangoes, for every 100*l.* of the value	20	0	0		—	
Archelia, *See* Orchal.						
Argol, the cwt.	0	2	0		—	
——— the produce of, and imported from any British possession, the cwt.	0	1	0		—	
Aristolochia, the lb.	0	0	10	0	0	6
Arquebusade Water, *See* Spirits.						
Arrow Root or Powder, the lb.	0	0	2		—	
——— the produce of any British possession, the lb.	0	0	1		—	
Arsenic, *viz.*						
——— White, the cwt.	0	14	3		—	
——— of any other sort, the cwt.	0	18	8		—	
Asafœtida, the lb.	0	0	10	0	0	6
Asarum Root, the lb.	0	0	8	0	0	5
Ashes, *viz.*						
——— Pearl and Pot, the cwt.	0	6	0		—	
- - - - - - - the produce of any British possession, and imported direct from thence		Free.			—	
——— Soap and Wood, the cwt.	0	1	8		—	
——— not otherwise enumerated or described, for every 100*l* of the value	20	0	0		—	
Asphaltum, the lb.	0	0	10	0	0	6
——— the produce of, and imported from any British possession, the lb.	0	0	5		—	
Asses, each	0	10	0		—	
Auripigmentum, *See* Orpiment.						

	Duty. £	s.	d.	Drawback. £	s.	d.
Bacon, the cwt.	1	8	0	—		
Balaustia, the lb.	0	0	10	—		
Balm of Gilead, *See* Balsam.						
Balsam, *viz.*						
——— Canada, the lb.	0	1	3	0	0	10
——— Copaiba or Capivi, the lb.	0	2	0	0	1	4
——— Riga, the lb.	0	1	0	—		
- - - and further as Foreign Spirits, for every gallon	1	10	0	—		
——— Balm of Gilead, Balsam of Peru, of Tolu, and and all Balsams not otherwise enumerated or described, the lb.	0	4	6	—		
Bandstring Twist, the dozen knots, each knot containing 32 yards	0	5	0	—		
Barilla, *viz.*						
——— if not containing a greater proportion of mineral alkali than 20 per centum,						
- - - from and after the 5th of January 1830, the ton	5	0	0	—		
——— if containing more than 20 per centum, and not more than 25 per centum of mineral alkali,						
- - - from and after the 5th January 1830, the ton	6	12	0	—		
——— if containing more than 25 per centum, and not more than 30 per centum of mineral alkali,						
- - - from and after the 5th January 1830, the ton	8	10	0	—		
——— if containing more than 30 per centum, and not more than 40 per centum of mineral alkali,						
- - - from and after the 5th of January 1830, the ton	11	0	0	—		
——— if containing more than 40 per centum of mineral alkali,						
- - - from and after the 5th Jannary 1830, the ton	13	0	0	—		
Bark, *viz.*						
—— Angustura Bark, the lb.	0	2	0	0	1	4
—— Cascarilla Bark, *See* Eleutheria Bark, in bark.						
—— Cinchona Bark, *See* Peruvian Bark, in bark.						
—— Clove Bark, the lb.	0	0	10	0	0	6
—— Cork Tree Bark, *See* Oak Bark, in Bark.						
—— Eleutheria or Cascarilla Bark, the lb.	0	0	6	0	0	4
—— Guaiacum Bark, the cwt.	1	8	0	0	18	8
—— Jesuits Bark, *See* Peruvian Bark, in bark.						
—— Oak Bark, the cwt.	0	0	8	—		
—— Oak Bark, solid Vegetable Extract from Oak Bark, *See* Extract.						
- - - Black Oak, or Quercitron Bark, for the purpose of dying, imported from any country not in Europe, the cwt.	0	2	0	—		
- - - - - - otherwise imported, for every 100*l.* of the value	20	0	0	—		
—— Peruvian or Jesuits Bark, the lb.	0	2	0	0	1	4
- - - Extract or Preparation of, *See* Extract.						
—— Red Mangrove Bark, the cwt.	0	0	8	—		

	Duty. £	s.	d.	Drawback. £	s.	d.
Bark,—*continued.*						
—— Sassafras Bark, the lb.	0	0	8	0	0	5
—— Simarouba Bark, the lb.	0	1	0	0	0	8
—— Winter's Bark, the lb.	0	0	8	0	0	5
—— Winter's Bark, the produce of any British possession, the lb.	0	0	4	0	0	3
—— Bark not otherwise enumerated or described, being being for the use of dyers or of tanners, and for no other use or purpose whatever, for every 100*l.* of the value	20	0	0	—		
- - - the produce of any British possession, for every 100*l.* of the value	10	0	0	—		
—— Bark, not particularly enumerated or described, nor otherwise charged with duty, whether pulverized or not, the lb.	0	2	0	—		
Bar Wood, the ton	0	7	0	—		
Basket Rods, the bundle, not exceeding three feet in circumference at the band	0	3	2	—		
Baskets, for every 100*l.* of the value	20	0	0	—		
Bast Ropes, the cwt.	0	10	0	—		
Bast or Straw Hats or Bonnets, *See* Hats.						
———— Platting, or other manufacture of Bast or Straw, for making hats or bonnets, *See* Platting.						
Bdellium, the lb.	0	1	8	0	1	1
Beads, *viz.*						
—— Amber Beads, the lb.	0	12	0	—		
—— Beads, Arango, for every 100*l.* of the value	20	0	0	—		
—— Coral Beads, the lb.	0	15	10	—		
—— Crystal Beads, the 1,000	1	8	6	—		
—— Jet Beads, the lb.	0	3	2	—		
—— Beads not otherwise enumerated or described, for every 100*l.* of the value	30	0	0	—		
Beans, Kidney or French Beans, the bushel	0	0	10	—		
Beef Wood, unmanufactured, imported from New South Wales, the ton	0	5	0	—		
Beer, *viz.*						
—— Mum, the barrel, containing 32 gallons	3	1	1	—		
—— Spruce Beer, the barrel, containing 32 gallons	3	6	0	—		
—— or Ale of all other sorts, the barrel, containing 32 gallons	2	13	0	—		
Benjamin, or Benzoin, the lb.	0	2	0	0	1	4
Berries, *viz.*						
—— Bay, the cwt.	0	11	1	—		
—— Juniper, the cwt.	0	11	1	—		
—— Yellow, for dyer's use, the cwt.	0	14	0	—		
—— Berries for dyer's use, not otherwise enumerated or described, the cwt.	0	12	0	—		
—— Berries not for dyer's use, not otherwise enumerated or described, for every 100*l.* of the value	30	0	0	—		
Bezoar Stones, the oz.	0	2	6	—		
Birds, *viz.* Singing Birds, the dozen	0	8	0	—		
Bitumen Judaicum, the lb.	0	0	10	0	0	6
Blacking, the cwt.	3	12	0	—		
Bladders, the dozen	0	0	6	—		
Blubber, *See* Train Oil, in oil.						
Bole Armenic or Armenian Bole, the cwt.	0	8	0	0	5	4
Bones of Cattle and other Animals, and of Fish, except Whale Fins, for every 100*l.* of the value	1	0	0	—		
Bonnets, *See* Hats.						

	Duty. £	s.	d.	Drawback. £ s. d.
Books, *viz.*				
—— being of editions printed prior to the year 1801, bound or unbound, the cwt.	1	0	0	—
—— being of editions printed in or since the year 1801, bound or unbound, the cwt.	5	0	0	—
—— in the foreign living languages printed in or since 1821, bound or unbound, by 4 & 5 W. 4. c. 89, the cwt.	2	10	0	—
Boots, Shoes, and Calashes, by 10 G. 4. c. 43.				
—— Women's Boots and Calashes, the dozen pairs	1	10	0	—
—— - - - - if lined with fur or other trimming	1	16	0	—
—— Women's Shoes with cork or double soles, quilled shoes and clogs	1	6	0	—
—— - - - - if trimmed or lined with fur or any trimming	1	9	0	—
—— Women's Shoes of silk, satin, jean, or other stuffs, kid, morocco, or other leather	0	18	0	—
—— - - - - if trimmed or lined with fur or other trimming	1	4	0	—
—— Children's Boots, Shoes, and Calashes, not exceeding seven inches in length, to be charged with two-thirds of the above duties.				
—— Men's Boots, the dozen pairs	2	14	0	—
—— Men's Shoes, the dozen pairs	1	4	0	—
—— Children's Boots and Shoes, not exceeding seven inches in length, to be charged with two-thirds of the above duties.				
Boracic Acid, the lb.	0	0	4	—
Borax or Tincal, *viz.*				
—— refined, the lb.	0	0	6	—
—— unrefined, the lb.	0	0	3	—
Botargo, the lb.	0	1	0	—
Bottles, *viz.*				
—— of Earth or Stone, empty, the dozen (4 & 5 W. 4.)	0	0	6	—
- - - - full, free of duty.				
—— of Glass covered with Wicker, the dozen quarts content	1	2	0	—
- - - - and further, for every cwt.	4	0	0	—
—— of Green or Common Glass, not of less content than one pint, and not being phials, *viz.*				
- - - - full, the dozen quarts content	0	4	0	—
- - - - empty, the dozen quarts content	0	2	0	—
—— of Glass, not otherwise enumerated or described, for every 100*l.* of the value	25	0	0	—
- - - - and further, for every cwt.	4	0	0	—
Note.—Flasks in which wine or oil is imported are not subject to duty.				
Boxes of all sorts, for every 100*l.* of the value	20	0	0	—
Box Wood, *viz.*				
—— the produce of, and imported from any British possession, the ton	1	13	4	—
—— of any other place, or if otherwise imported, the ton	7	18	6	—
Brass, *viz.*				
—— Manufactures of, not otherwise enumerated or described, for every 100*l.* of the value	30	0	0	—
—— Powder of, for japanning, the lb.	0	2	6	—
—— Wire, *See* Wire.				
Brazil Wood, not otherwise enumerated or described, the ton	5	0	0	—

	Duty.			Drawback.		
	£	s.	d.	£	s.	d.
Braziletto, or Jamaica Wood, the ton	0	4	6		—	
——— from British possessions	0	3	6		—	
Bricks or Clinkers, the 1,000	1	2	6		—	
Brimstone, *viz.*						
——— Rough, the cwt.	0	0	6		—	
——— Refined, the cwt.	0	6	0		—	
——— in Flour, the cwt.	0	9	9		—	
Bristles, *viz.*						
——— dressed, the dozen lbs.	0	12	0		—	
——— rough or undressed, the dozen lbs.	0	3	7		—	
Brocade of Gold or Silver, from the 5th July 1826, for every 100*l.* of the value	30	0	0		—	
——— of Silk, *See* Silk Manufactures.						
Bronze, all Works of Art made of Bronze, the cwt.	1	0	0		—	
——— other manufactures of, for every 100*l.* of the value (4 & 5 W. 4.)	30	0	0		—	
——— Powder, for every 100*l* of the value	25	0	0		—	
Buck Wheat, the quarter	0	14	0		—	
Bugles, of all sorts, the lb.	0	4	0		—	
Bullion and Foreign Coin, of gold or silver, and ore of gold or silver, or of which the major part in value is gold or silver, duty free.						
Bull Rushes, the load, containing 36 bundles	0	12	0		—	
Burrachas, *See* Caoutchouc.						
Burrs for Mill Stones, *See* Stones.						
Butter, the cwt.	1	0	0		—	
Buttons, from the 5th July 1826, for every 100*l.* of the value	20	0	0		—	
Cables, tarred or untarred, whether in use or otherwise, the cwt.	0	10	9		—	
Calaminaris Lapis, *See* Lapis.						
Calamus Aromaticus, the lb.	0	0	10	0	0	6
Calves Velves, the cwt.	0	11	6		—	
Cambogium, *See* Gamboge.						
Cambrics, *See* Linen.						
Camomile, Flowers, the lb.	0	0	6	0	0	4
Camphor, *viz.*						
——— refined, the lb.	0	0	10		—	
——— unrefined, the lb.	0	0	5		—	
Camwood, the ton	0	15	0		—	
Cancrorum Oculi, the lb.	0	1	3	0	0	10
Candles, *viz.*						
——— Spermaceti, the lb.	0	2	6		—	
——— Tallow, the cwt.	3	3	4		—	
——— Wax, the lb.	0	2	6		—	
Candlewick, the cwt.	1	8	8		—	
Canella Alba, the lb. (by 10 G. 4. c. 43. only)	0	0	1		—	
Canes, *viz.*						
——— Bamboo, the 1,000	1	14	0		—	
——— Rattans, not ground, the 1,000	1	0	0		—	
——— Reed Canes, the 1,000	1	6	6		—	
——— Walking Canes or Sticks, mounted, painted, or otherwise ornamented, for every 100*l.* of the value	30	0	0		—	
——— Whangees, Jumboo, Ground Rattans, Dragon's Blood, and other Walking Canes or Sticks, the 1,000	4	0	0		—	
Cantharides, the lb.	0	3	6	0	2	4

	Duty. £	s.	d.	Drawback. £	s.	d.
Caoutchouc, or Elastic Gum, the lb.	0	0	5	—		
Capers, the lb.	0	1	0	—		
Capita Papaverum, the 1,000	0	3	6	0	2	4
Capsicum, *See* Pepper.						
Cardamoms, the lb.	0	2	0	0	1	4
——— Extract or Preparation of, *See* Extract.						
Cards, *viz.* Playing Cards, the dozen packs	1	0	0	—		
Cariophillorum Cortex, *See* Clove Bark, in Bark.						
——— Oleum, *See* Oil of Cloves.						
Carmine, the oz.	0	1	0	—		
Carrabe, *See* Succinum.						
Carriages of all sorts, for every 100*l.* of the value	30	0	0	—		
Cassara Powder, or Starch, the produce of and imported from any British possession in America, by 4 & 5 W. 4. c. 89. the cwt.	0	1	0	—		
Casks, empty, for every 100*l.* of the value	50	0	0	—		
Cassia, *viz.*						
——— Buds, the lb.	0	1	0	—		
——— Fistula, the lb.	0	0	10	0	0	6
——— Lignea, the lb.	0	1	0	—		
——— from any British possession	0	0	6	—		
Castor, the lb.	0	5	0	0	3	4
Casts of Busts, Statutes, or Figures, the cwt.	0	2	6	—		
Catechu, *See* Terra Japonica.						
Catlings, Harpstrings, or Lutestrings, the gross, containing 12 dozen knots	0	6	4	—		
Caviare, the cwt.	0	12	0	—		
Cedar Wood, the ton	3	16	0	—		
——— the produce of, and imported from any British possession (except the Cape of Good Hope,) the ton	1	0	0	—		
——— the produce of the Cape of Good Hope, and imported direct from thence, the ton	0	10	0	—		
Chalk, *viz.*						
——— prepared, or otherwise manufactured, and not otherwise enumerated or described, for every 100*l.* of the value	40	0	0	—		
——— unmanufactured, and not otherwise enumerated or described, for every 100*l.* of the value	20	0	0	—		
Charts, *See* Maps.						
Cheese, the cwt.	0	10	6	—		
Cherries, the cwt.	0	18	8	—		
——— dried, the lb.	0	0	8	—		
Chillies, *See* Pepper.						
China Root, the lb.	0	1	3	0	0	10
China or Porcelain Ware, *viz.*						
——— plain, for every 100*l.* of the value	15	0	0	—		
——— painted, gilt, or ornamented, for every 100*l.* of the value	30	0	0	—		
Chip, Manufactures of, to make Hats or Bonnets, *See* Platting.						
Chocolate and Cocoa Paste, *viz.*						
——— the produce of, and imported from any British possession, the lb.	0	1	9	—		
——— the produce of any other place, or if otherwise imported, the lb.	0	4	4	—		
Cider, the tun	21	10	0	—		
Cinders, the ton	2	0	0	—		

	Duty. £	s.	d.	Drawback. £	s.	d.
Cinnabaris Nativa, the lb.	0	0	3	0	0	2
Cinnamon, the lb. (by 10 G. 4. c. 43. only)	0	1	0	—		
——— the produce of, and imported from any British possession, the lb. only	0	0	6	—		
Citrat of Lime, the lb.	0	1	6	—		
Citron preserved with Salt, for every 100*l.* of the value	20	0	0	—		
——— preserved with Sugar, *See* Succades.						
Citron Water, *See* Spirits.						
Civet, the oz.	0	1	9	—		
Clinkers, *See* Bricks.						
Clocks, for every 100*l.* of the value	25	0	0	—		
Cloves, the lb.	0	3	0	0	2	7
——— the produce of, and imported from any British possession, the lb.	0	2	0	0	1	9
Coals, the ton	2	0	0	—		
Cobalt, the lb.	0	0	3	—		
Coculus Indicus, the lb.	0	2	6	—		
——— Extract or Preparation of, *See* Extract.						
Cochineal, the lb.	0	1	0	—		
——— Dust, the lb.	0	0	5	—		
——— the produce of any British possession, the lb.	0	0	4	—		
- - - - Dust, the lb.	0	0	1½	—		
Cocoa Nuts, *viz.*						
——— the produce of any British possession in America, the lb.	0	0	6	—		
——— the produce of any British possession within the limits of the East India Company's charter, the lb.	0	0	9	—		
——— the produce of any other place, the lb. . .	0	1	3	—		
Cocoa Nut Husks, or Cocoa Shells, the lb.	0	0	2	—		
Cocoa Paste, *See* Chocolate.						
Cocus Wood, the produce of any British possession, the ton	0	3	0	—		
Codilla, *See* Flax.						
Coffee, *viz.*						
——— the produce of any British possession in America, the lb.	0	0	6	—		
——— the produce of any British possession within the limits of the East India Company's Charter, the lb.	0	0	9	—		
——— the produce of any other place, the lb. . . .	0	1	3	—		
Coin, *viz.*						
——— of Copper, *See* Copper.						
——— Foreign, of Gold or Silver, *See* Bullion.						
Coker or Coco Nuts, *See* Nuts.						
Coloquintida, or Colocynth, the lb.	0	1	8	0	1	1
Columba Root, the lb.	0	2	0	0	1	4
Comfits, the lb.	0	2	6	—		
Copper, *viz.*						
——— Ore, the cwt.	0	12	0	—		
——— old, fit only to be re-manufactured, the cwt. .	0	15	0	—		
——— in Plates and Copper Coin, the cwt.	1	10	0	—		
——— unwrought, *viz.*						
- - - - in Bricks or Pigs, Rose Copper, and all Cast Copper, the cwt.	1	7	0	—		
——— in part wrought, *viz.*						
- - - - - - - - - - Bars, Rods, or Ingots, hammered or raised, the cwt.	1	15	0	—		
——— Wire, *See* Wire.						

	Duty. £	s.	d.	Drawback. £	s.	d.
Copper,—*continued.*						
—— Manufactures of Copper not otherwise enumerated or described, and Copper Plates engraved, for every 100*l.* of the value . . .	30	0	0	—		
—— the produce of any British possession within the limits of the East India Company's Charter, *viz.*						
- - - - Ore, the cwt.	0	1	0	—		
- - - - old, fit only to be re-manufactured, the cwt.	0	9	2	—		
- - - - in Plates and Copper Coin, the cwt. .	0	15	0	—		
- - - - unwrought, *viz.*						
- - - - - - in Bricks or Pigs, Rose Copper, and all Cast Copper, the cwt. . . .	0	9	2	—		
- - - - in part wrought, *viz.*						
- - - - Bars, Rods, or Ingots, hammered or raised, the cwt. .	1	11	3	—		
- - - - Manufactures of Copper, not otherwise enumerated or described, and Copper Plates engraved, for every 100*l.* of the value	30	0	0	—		
Copperas, *viz.*						
—— Blue, the cwt.	0	5	0	—		
—— Green, the cwt.	0	5	0	—		
—— White, the cwt.	0	12	0	—		
Coral, *viz.*						
—— Beads, *See* Beads.						
—— in fragments, the lb.	0	1	0	—		
—— whole, polished, the lb.	0	12	0	—		
- - - unpolished, the lb.	0	5	6	—		
- - - - of British fishing or taking, the lb.	0	0	6	—		
Cordage, tarred or untarred, whether in use or otherwise, (standing or running rigging in use excepted), the cwt.	0	10	9	—		
Cordial Waters, *See* Spirits.						
Cork, the cwt.	0	8	0	—		
Corks, ready made, the lb.	0	7	0	—		
Corn, *See* page 1132.						
Cornu Cervi Calcinatum, the lb.	0	0	8	—		
Cortex Eleutheria (by 10 G. 4. c. 43.)	0	0	1	—		
Costus, the lb.	0	1	0	0	0	8
Cotton, *viz.*						
—— Manufactures of, for every 100*l.* of the value .	10	0	0	—		
- - - - and further, if printed, for every square yard	0	0	3½	—		
—— Wool, or Waste of Cotton Wool, *See* Wool.						
Couhage or Cowitch, the lb.	0	1	3	0	0	10
Cowries, for every 100*l.* of the value	20	0	0	—		
Cranberries, the gallon	0	0	6	—		
Crayons, for every 100*l.* of the value	40	0	0	—		
Cream of Tartar, the cwt.	0	4	8	—		
Crystal, *viz.*						
—— Beads, *See* Beads.						
—— rough, for every 100*l.* of the value	20	0	0	—		
—— cut, or in any way manufactured, for every 100*l.* of the value	30	0	0	—		
Cubebs, the lb.	0	2	0	—		
Cucumbers, *viz.*						
—— pickled, including the vinegar, the gallon .	0	3	0	—		
—— preserved in salt and water, for every 100*l.* of the value	20	0	0	—		

	Duty. £	s.	d.	Drawback. £	s.	d.
Culm, the ton	2	0	0	—		
Currants, the cwt. (by 4 & 5 W. 4. c. 89.)	1	2	2	—		
Cuttle Shells, the 1,000	0	12	6	—		
Damask Tabling, Towelling, or Napkinning, *See* Linen.						
Dates, the cwt.	4	10	3	4	0	0
Derelict. Foreign Liquors, Derelict, Jetsam, Flotsam, Lagan, or Wreck, brought or coming into Great Britain or Ireland, are subject to the same duties, and and entitled to the same drawbacks, as liquors of the like kind regularly imported.						
Diagrydium, *See* Scammony.						
Diamonds—Duty-free.						
Diaper Tabling, Towelling, or Napkinning, *See* Linen.						
Dice, the pair	1	6	2	—		
Dittany, the lb.	0	1	0	0	0	8
Down, the lb.	0	1	3	-		
Dragon's Blood, *See* Sanguis Draconis.						
Drawings, *See* Prints.						
Drugs, not particularly enumerated or described, nor otherwise charged with duty, for every 100*l.* of the value	20	0	0	-		
Dust, perfumed, *See* Powder.						
Earthenware, not otherwise enumerated or described, for every 100*l.* of the value	15	0	0	—		
Eels, *See* Fish.						
Ebony, *viz.*						
——— the produce of any British possession, and imported direct from thence, the ton	0	15	0	—		
——— the produce of any other country, or if otherwise imported, the ton	21	14	0	—		
——— Green, the produce of and imported from any British possession, the ton	0	3	0	—		
Eggs, the 120	0	0	10	—		
Elastic Gum, *See* Caoutchouc.						
Embroidery and Needlework, from the 5th July 1826, for every 100*l.* of the value	30	0	0	—		
Emery Stones, *See* Stone.						
Enamel, the lb.	0	7	2	—		
Essence, *viz.*						
——— of Bergamot or of Lemon, the lb.	0	4	6	—		
——— of Spruce, for every 100*l.* of the value	20	0	0	—		
——— not otherwise enumerated or described, the lb.	0	4	6	—		
Euphorbium, the lb.	0	0	8	0	0	5
Extract, *viz.*						
——— Cardamoms, ——— Coculus Indicus, ——— Grains, *viz.* ——— Guinea Grains, ——— of Paradise, ——— Liquorice, ——— Nux Vomica, } Extract or Preparation of, for every 100*l.* of the value	75	0	0	—		
——— Oak Bark, solid Vegetable Extract from Oak Bark, or other Vegetable Substances, to be used for the purpose of tanning leather, and for no other purpose whatever, the cwt.	0	3	0	—		
——— the produce of New South Wales and its dependencies, and imported direct from thence, until the 1st January 1833, Duty free.						

	Duty. £	s.	d.	Drawback. £ s. d.
Extract,—*continued.*				
——— Opium, ——— Pepper, *viz.* Guinea Pepper, } Extract or Preparation of, for every 100*l.* of the value	25	0	0	—
——— Peruvian or Jesuits Bark, Extract or Preparation of, the lb.	0	5	0	—
——— Quassia, Extract or Preparation of, for every 100*l.* of the value	50	0	0	—
——— Radix Rhataniæ, Extract or Preparation of, the lb.	0	5	0	—
——— Vitrol, Extract or Preparation of, for every 100*l.* of the value	25	0	0	—
——— Extract or Preparation of any Article, not being particularly enumerated or described, nor otherwise charged with duty, for every 100*l.* of the value	20	0	0	—
Feathers, *viz.*				
——— for Beds, in beds or not, the cwt.	2	4	0	—
——— Ostrich, dressed, the lb.	1	10	0	—
- - - - - undressed, the lb.	0	10	0	—
——— not otherwise enumerated or described, *viz.*				
- - - - - dressed, for every 100*l.* of the value .	20	0	0	—
- - - - - undressed, for every 100*l.* of the value	10	0	0	—
Figs, the cwt. (by 4 & 5 W. 4. c 89.)	0	15	6	—
Filtering Stones, *See* Stones.				
Fish, *viz*				
——— Eels, the Ship's Lading	13	1	3	—
——— Lobsters—Duty free.				
——— Oysters the bushel	0	1	6	—
——— Stock Fish, the 120	0	5	0	—
——— Sturgeon, the keg, not containing more than five gallons	0	9	0	—
——— Turbots, Free.				
——— Fresh Fish, of British taking, and imported in British ships or vessels, Free.				
——— cured Fish, of British taking and curing, Free.				
Fishing Nets, Old, *See* Rags.				
Flasks, *See* Bottles.				
Flax, and Tow or Cordilla, of Hemp or Flax, whether dressed or undressed, *viz.*				
——— from and after the 5th July 1828, the cwt. . . .	0	0	1	—
Flint Stones for Potters, *See* Stones.				
Flocks, the cwt.	0	19	0	—
Flotsam, *See* Derelict.				
Flower Roots, for every 100*l.* of the value	20	0	0	—
Flowers, Artificial, not made of silk, for every 100*l.* of the value	25	0	0	—
Fossils, not otherwise enumerated or described, for every 100*l.* of the value	20	0	0	—
——— Specimens of, *See* Specimens.				
Frames for Pictures, Prints, or Drawings, for every 100*l.* of the value	20	0	0	—
Frankincense, *See* Olibanum.				
Furriers' Waste, for every 100*l.* of the value	20	0	0	—
Furs, *See* Skins.				
Fustic, the ton	0	4	6	—
——— the produce of any British possession in America, or on the West Coast of Africa, the ton . .	0	3	0	—

	Duty.			Drawback.		
	£	s.	d.	£	s.	d.
Galangal, the lb.	0	0	6	0	0	4
Galbanum, the lb.	0	1	4	0	0	10
Galls, the cwt.	0	11	2		—	
Gamboge, the lb.	0	1	8	0	1	1
Garnets, *viz.*						
——— cut, the lb.	1	10	0		—	
——— rough, the lb.	0	10	0		—	
Gauze of Thread, for every 100*l.* of the value	30	0	0		—	
Gentian, the lb.	0	0	6	0	0	4
Ginger, the cwt.	2	13	0		—	
——— preserved, the lb.	0	3	2		—	
——— the produce of any British possession, the cwt.	0	11	6	0	10	0
- - - preserved, the lb.	0	0	3		—	
Ginseng, the lb.	0	1	6	0	1	0
Glass, from and after 5th January 1826, *viz.*						
——— Crown Glass, or any kind of Window Glass, (not being Plate Glass or German Sheet Glass), the cwt.	8	6	8		—	
——— German Sheet Glass, the cwt.	10	0	0		—	
——— Plate Glass, superficial measure, *viz.*						
- - - not containing more than nine square feet,						
- - - - - after the 5th January 1827, the square foot	0	6	0		—	
- - - containing more than 9 square feet, and not more than 14 square feet,						
- - - - - after the 5th January 1827, the square foot	0	8	0		—	
- - - containing more than 14 square feet, and not more than 36 square feet,						
- - - - - after the 5th January 1827, the square foot	0	9	6		—	
- - - containing more than 36 square feet,						
- - - - - after the 5th January 1827, the square foot	0	11	0		—	
——— Glass Manufactures, not otherwise enumerated or described, and old broken glass fit only to be re-manufactured, for every 100*l.* of the value	20	0	0		—	
- - - and further, for every cwt.	4	0	0		—	
Glovers' Clippings, fit only to make glue, the cwt.	0	4	9		—	
Gloves, *viz.*						
——— Habit Gloves, from the 5th July 1826, the dozen pair	0	4	0		—	
——— Men's Gloves, from the 5th July 1826, the dozen pair	0	5	0		—	
——— Women's Gloves or Mitts, from the 5th July 1826, the dozen pair	0	7	0		—	
Glue, the cwt.	0	12	0		—	
Grains, *viz.*						
——— Guinea Grains, the lb.	0	2	0		—	
- - - - - - - Extract or Preparation of, *See* Grains, in Extract.						
——— of Paradise, the lb.	0	2	0		—	
- - - - - - - Extract or Preparation of, *See* Grains, in Extract.						
Granilla, the lb.	0	0	10		—	
——— the produce of any British possession, the lb.	0	0	5		—	
Grapes, for every 100*l.* of the value (4 & 5 W. 4.)	5	0	0		—	
——— Rape of, *See* Rape of Grapes.						

	Duty. £	s.	d.	Drawback. £	s.	d.
Grease, the cwt.	0	1	8		—	
Greaves for dogs, the cwt.	0	2	0		—	
Gum, *viz.*						
—— Ammoniac, the lb.	0	1	3	0	0	10
—— Anini, rough, and in no way cleaned, the lb.	0	0	5		—	
—— - - - scraped, or in any way cleaned, the lb.	0	0	6		—	
—— Arabic, the cwt.	0	12	0		—	
—— Cashew, the cwt.	0	7	6	0	5	0
Copal, rough, and in no way cleaned, the lb.	0	0	5		—	
—— - - - scraped, or in any way cleaned, the lb.	0	0	6		—	
—— Elemi, the lb.	0	0	8	0	0	5
—— Guaiacum, the lb.	0	1	10	0	1	2
—— Juniper, *See* Gum Sandarach.						
—— Kino, or Gum Rubrium Astringens, the lb.	0	1	6	0	1	0
—— Lac, *viz.*						
- - - Cake Lac, - - - Lac Lake, } for every 100*l.* of the value	10	0	0		—	
- - - Lac Dye, - - - Seed Lac, - - - Stick Lac, } for every 100*l.* of the value	5	0	0		—	
- - - Shell Lac, for every 100*l.* of the value	20	0	0		—	
—— Opopanax, the lb.	0	3	6	0	2	4
—— Rubrum Astringens, *See* Gum Kino.						
—— Sagapenum, the lb.	0	0	10	0	0	6
—— Sandarach, or Juniper, the cwt.	0	19	0	0	12	8
—— Sarcocolla, the lb.	0	0	10	0	0	6
—— Senegal, the cwt.	0	12	0		—	
—— Tacamahaca, the lb.	0	2	0	0	1	4
—— Tragacanth, the lb.	0	1	0	0	0	8
—— Gum, not particularly enumerated or described, or otherwise charged with duty, for every 100*l.* of the value	20	0	0		—	
Gunpowder, the cwt.	3	0	0		—	
Gypsum, the ton	1	11	8		—	
———— the produce of, and imported from any British possession, the ton	0	1	3		—	
Hair, *viz.*						
—— Camel's Hair or Wool, the lb.	0	0	1		—	
- - - the produce of, and imported from any British possession, Free.						
—— Cow, Ox, Bull, or Elk Hair, the cwt.	0	10	0		—	
—— Goat's Hair, *See* Wool.						
—— Hats made of Hair, *See* Hats.						
—— Horse Hair, for every 100*l.* of the value	20	0	0		—	
—— Human Hair, the lb.	0	5	0		—	
—— not otherwise enumerated or described, for every 100*l.* of the value	20	0	0		—	
—— Manufactures of Hair or Goat's Wool, or of Hair or Goat's Wool and any other Material, not particularly enumerated, or otherwise charged with duty, for every 100*l.* of the value	30	0	0		—	
Hams, the cwt.	1	8	0		—	
Harp Strings, *See* Catlings.						
Hats, *viz.*						
—— Bast, Chip, Cane, or Horse Hair Hats or Bonnets, each Hat or Bonnet not exceeding 22 inches in diameter, the dozen	1	0	0		—	

	Duty.			Drawback.		
	£	s.	d.	£	s.	d.
Hats,—*continued.*						
- - - - - each Hat or Bonnet exceeding 22 inches in diameter, the dozen	2	0	0		—	
—— Straw Hats or Bonnets, each Hat or Bonnet not exceeding 22 inches in diameter, the dozen	3	8	0		—	
- - - - - each Hat or Bonnet exceeding 22 inches in diameter, the dozen	6	16	0		—	
—— made of or mixed with felt, hair, wool, or beaver, the Hat	0	10	6		—	
Hay, the Load, containing 36 trusses, each truss being 56lbs.	1	4	0		—	
Head Matter, *See* Train Oil, in Oil.						
Heath, for Brushes, the cwt.	0	9	2		—	
Helebore, the lb.	0	0	6	0	0	4
Hemp, *viz.*						
——— dressed, the cwt.	4	15	0		—	
——— rough or undressed, or any other vegetable substance of the nature and quality of undressed Hemp, and applicable to the same purposes, the cwt.	0	4	8		—	
- - - - the produce of any British possession		Free.				
Hessen Canvas, *See* Linen.						
Hides, *viz.*						
——— Horse, Mare, Gelding, Buffalo, Bull, Cow, or Ox Hides in the Hair, not tanned, tawed, curried, or in any way dressed, *viz.*						
- - - dry, the cwt.	0	4	8		-	
- - - wet, the cwt.	0	2	4			
- - - the produce of and imported from the West Coast of Africa, each hide not exceeding 14 lbs. weight, the cwt.	0	2	4		—	
- - - tanned and not otherwise dressed, the lb.	0	1	0		—	
- - - the produce of any British possession, *viz.*						
- - - dry, the cwt.	0	2	4		—	
- - - wet, the cwt.	0	1	2		—	
- - - tanned, and not otherwise dressed, the lb.	0	0	6		—	
——— Tails, *See* Tails.						
——— Losh Hides, the lb.	0	1	8		—	
——— Muscovy or Russia Hides, tanned, or coloured, the hide (by 10 G. 4. c. 43.)	0	5	0		—	
——— Pieces, tanned, coloured, shaved, or otherwise dressed, the lb.	0	2	6		—	
——— Hides, or Pieces of Hides, raw or undressed, not particularly enumerated or described, nor otherwise charged with duty, imported from any British possession in America, for every 100*l.* of the value	5	17	6		—	
——— Hides, or Pieces of Hide, raw or undressed, not particularly enumerated or described, nor otherwise charged with duty, for every 100*l.* of the value	20	0	0		—	
——— Hides, or Pieces of Hides, tanned, tawed, curried, or in any way dressed, not particularly enumerated or described, or otherwise charged with duty for every 100*l.* of the value	40	0	0		—	
Hones, the 100	1	3	0		—	
Honey, the produce of any British possession, the cwt.	0	5	0		—	
——— the produce of any other place, the cwt.	0	15	0		—	

	Duty. £	s.	d.	Drawback. £ s. d.
Hoofs of Cattle, for every 100*l.* of the value	20	0	0	—
Hoops of Wood, not exceeding six feet in length, the 1,000	0	5	0	—
—— exceeding six and not exceeding nine feet	0	7	6	—
—— exceeding nine and not exceeding twelve feet	0	10	0	—
—— exceeding twelve and not exceeding fifteen feet	0	12	6	—
—— exceeding fifteen feet	0	15	0	—
—— of Iron, the cwt.	1	3	9	—
Hops, the cwt.	8	11	0	—
Horns, Horn Tips, and Pieces of Horns, not otherwise charged with duty, the cwt.	0	2	4	—
Horses, Mares, or Geldings, each	1	0	0	—
Hulled Barley, *See* Pearl Barley.				
Hungary Water, *See* Spirits.				
Jalap, the lb.	0	2	0	0 1 4
Japanned Ware, for every 100*l.* of the value	20	0	0	—
Jet, the lb.	0	2	0	—
— Beads, *See* Beads.				
Jetsam, *See* Derelict.				
Jewels, Emeralds, Rubies, and all other Precious Stones (except Diamonds), *viz.*				
- - - - - set, for every 100*l.* of the value	20	0	0	—
- - - - - not set, for every 100*l.* of the value	10	0	0	—
Jews' Pitch, *See* Bitumen Judaicum.				
India Rubbers, *See* Caoutchouc.				
Indigo, the lb.	0	0	4	—
—— the produce of any British possession, the lb.	0	0	3	—
Ink for Printers, the cwt.	1	1	0	—
Inkle, *viz.*				
—— unwrought, the lb.	0	0	10	—
—— wrought, the lb.	0	5	2	—
Iris Root, *See* Orrice Root.				
Iron, Chromate of (by 10 G. 4. c. 43.) per ton	0	5	0	—
—— in bars or unwrought,				
- - - the produce of any British possession, and imported from thence, the ton	0	2	6	—
- - - the produce of any other country, the ton	1	10	0	—
—— slit or hammered into rods, and Iron drawn or hammered less than ¾ of an inch square, the cwt.	0	5	0	—
—— Cast, for every 100*l.* of the value	10	0	0	—
—— Hoops, *See* Hoops.				
—— old broken, and old cast Iron, the ton	0	12	0	—
—— Ore, the ton	0	5	0	—
—— Pig Iron, the ton	0	10	0	—
- - - - - the produce of and imported from any British possession, the ton	0	1	3	—
—— Wire, *See* Wire.				
—— wrought, not otherwise enumerated or described, for every 100*l.* of the value	20	0	0	—
Isinglass, the cwt.	2	7	6	—
—— the produce of and imported from any British possession, the cwt.	0	15	10	—
Juice of Lemons, Limes, or Oranges,				
—— raw, the gallon, for every degree of specific gravity or strength	0	0	0¼	—
—— concentrated, the gallon, for every degree of specific gravity or strength	0	0	0½	—

	Duty. £	s.	d.	Drawback. £ s. d.
Juice, &c.—*continued.*				
—— the produce of and imported from any British possession, whether concentrated or raw, the gallon, for every degree of specific gravity or strength	0	0	0½	—
Junk, old, *See* Rags, old.				
Kelp, *See* Alkali.				
Lac, *See* Lac, in Gum.				
Lace, *viz.*				
—— Silk Lace,				
- - - - after the 5th July, 1826, *See* Silk Manufactures.				
—— Thread Lace, for every 100*l.* of the value . .	30	0	0	—
—— Plain Silk Lace, called Net or Tulle,				
- - - - after the 5th July, 1826, *See* Silk Manufactures.				
Lacquered Ware, for every 100*l.* of the value . . .	30	0	0	—
Lagan, *See* Derelict.				
Lamp Black, the cwt.	3	6	6	—
Lapis, *viz.*				
—— Calaminaris, the cwt.	0	1	0	—
—— Lazuli, the lb. . :	0	3	2	—
—— Tutiæ, the lb.	0	0	8	—
Lard, the cwt.	0	8	0	—
Latten, *viz.*				
—— Black, the cwt.	0	14	0	—
—— Shaven, the cwt.	1	5	0	—
Lavender Flowers, the lb.	0	0	10	—
Lawns, *See* Linen.				
Lead, *viz.*				
—— Black, the cwt.	0	4	0	—
—— Chromate of Lead, the lb.	0	2	0	—
—— Ore, the ton	0	10	0	—
—— Pig, the ton	2	0	0	—
—— Red, the cwt.	0	6	0	—
—— White, the cwt.	0	7	0	—
Leather, any article made of leather, or any manufacture whereof leather is the most valuable part, not otherwise enumerated or described, for every 100*l.* of the value	30	0	0	—
Leaves of Gold, the 100 leaves	0	3	0	—
Leaves of Roses, the lb.	0	0	10	—
Lemons, *See* Oranges.				
—— Peel of, the lb.	0	0	5	—
—— preserved in salt and water, for every 100*l.* of the value	20	0	0	—
- - - - - in Sugar, *See* Succades.				
Lentiles, the bushel	0	0	10	—
Lichen Islandicus, *See* Moss.				
Lignum, *viz.*				
—— Quassia, *See* Quassia.				
—— Rhodium, the cwt.	1	0	0	—
—— Vitæ, the produce of and imported from any possession, the ton	0	11	2	—
- - - of any other place, or if otherwise imported, the ton	4	12	8	—
Limes, Juice of, *See* Juice.				

	Duty. £	s.	d.	Drawback. £ s. d.
Linen, or Linen and Cotton, *viz.*				
——— Cambrics and Lawns, commonly called French Lawns, the piece not exceeding eight yards in length, and not exceeding seven-eighths of a yard in breadth, and so in proportion for any greater or less quantity,				
——— - - - plain	0	6	0	—
——— - - - bordered handkerchiefs	0	5	0	—
——— Lawns of any other sort, not French, *viz.*				
- - - not containing more than 60 threads to the inch of warp, the square yard	0	0	9	—
- - - containing more than 60 threads to the inch of warp, the square yard	0	1	0	—
——— Damasks, and Damask Diaper, *viz.*				
- - - from the 5th January, 1834, the square yard	0	2	0	—
——— Drillings, Ticks, and Twilled Linens, *viz.*				
- - - from the 5th of January, 1834, the square yard	0	0	8	—
——— Sail Cloth, the square yard	0	0	7½	—
——— Plain Linens, and Diaper, not otherwise enumerated or described, and whether chequered or striped with dyed yarn or not, *viz.*				
- - - not containing more than 20 threads to the inch of warp,				
- - from the 5th Jan. 1834, the square yard	0	0	2¼	—
- - - containing more than 20 threads, and not more than 24 threads to the inch of warp,				
- - - - from the 5th of January, 1834, the square yard	0	0	3	—
- - - containing more than 24 threads, and not containing more than 30 threads to the inch of warp,				
- - - - from the 5th of January, 1834, the square yard	0	0	4	—
- - - containing more than 30 threads, and not containing more than 40 threads to the inch of warp,				
- - - - from the 5th of January, 1834, the square yard	0	0	4½	—
- - - containing more than 40 threads, and not containing more than 60 threads to the inch of warp,				
- - - - from the 5th of January, 1834, the square yard	0	0	8	—
- - - containing more than 60 threads, and not containing more than 80 threads to the inch of warp,				
- - - - from the 5th of January, 1834, the square yard	0	0	10	—
- - - containing more than 80 threads, and not containing more than 100 threads to the inch of warp,				
- - - - from the 5th of January, 1834, the square yard	0	1	0	—
- - - containing more than 100 threads to the inch of warp,				
- - - - from the 5th of January, 1834, the square yard	0	1	6	—

	Duty. £ s. d.	Drawback. £ s. d.
Linen, or Linen and Cotton,—*continued.*		
——— or, and instead of the duties herein-before imposed upon Linens of all sorts, at the option of the importer, for every 100*l.* of the value	40 0 0	—
Note.—No increased rate of duty to be charged on any Linen or Lawns for any additional number of threads not exceeding two threads, for such as are not of 30 threads to the inch, nor for any additional number of threads not exceeding five threads, for such as are of 30 threads and upwards to the inch.		
——— Printed Linen, in addition to the rated duties thereon, for every square yard	0 0 3½	—
——— Sails, for every 100*l.* of the value	30 0 0	—
——— Foreign-made Sails, on board any ship or vessel belonging to any of his Majesty's subjects, whether in use or not, for every 100*l.* of the value	30 0 0	—
——— Manufactures of Linen, or of Linen mixed with cotton or with wool, not particularly enumerated or otherwise charged with duty, from and after 5th Jan. 1826, for every 100*l.* of the value	25 0 0	—
- - - - - - - and further, if printed, for every square yard	0 0 3½	—
Linseed Cakes, the cwt.	0 0 2	—
Liquorice Juice, or Succus Liquoritiæ, the cwt.	3 15 0	—
——— Powder, the cwt.	5 10 0	—
——— Root, the cwt.	3 3 4	—
——— Extract or Preparation of, *See* Extract.		
Liquors. Foreign Liquors, Derelict, Jetsam, Flotsam, Lagan, or Wreck, brought or coming into Great Britain or Ireland, are subject to the same duties, and entitled to the same drawbacks, as liquors of the like kind regularly imported.		
Litharge of Gold or Silver, the cwt.	0 2 0	—
Litmus, the cwt.	0 4 0	—
Liverwort, *See* Lichen Islandicus, in Moss.		
Logwood, the ton	0 4 6	—
——— the produce of any British possession in America, or on the West Coast of Africa, the ton	0 3 0	—
Lupines, the cwt.	0 5 0	—
Lutestrings, *See* Catlings.		
Macaroni, the lb.	0 0 8	—
Mace, the lb.	0 4 6	0 4 0
—— the produce of and imported from any British possession, the lb.	0 3 6	0 3 2
Madder, the cwt.	0 6 0	—
Madder Root, the cwt.	0 1 6	—
Magna Græcia Ware, for every 100*l.* of the value	5 0 0	—
Mahogany, *viz.*		
——— of the growth of Bermuda, or any of the Bahama Islands, and imported direct from thence respectively, and Mahogany imported direct from the Bay of Honduras, in a British ship, cleared out from the port of Belize, the ton	3 16 0	—

	Duty. £	s.	d.	Drawback. £	s.	d.
Mahogany,—*continued*						
——— of the growth of the Island of Jamaica, and imported direct from thence, the ton . .	5	0	0	—		
——— of the growth of any other place, or otherwise imported or cleared out, the ton .	11	17	6	—		
Mangoes, the gallon	0	6	0	—		
Manna, the lb.	0	1	3	0	0	10
Manuscripts, the lb.	0	0	2	—		
Maps or Charts, plain or coloured, each map or chart, or part thereof	0	0	6	—		
Marble, *See* Stone.						
Marbles for children, *See* Toys.						
Marmalade, the lb.	0	1	3	—		
——— the produce of any British possession, the lb.	0	0	3	—		
Mastic, the lb.	0	1	4	0	0	10
Mats, *viz.*						
——— of Russia, the 100	1	3	9	—		
——— not otherwise enumerated or described, for every 100*l.* of the value	20	0	0	—		
Matting, for every 100*l.* of the value	20	0	0	—		
Mattrasses, for every 100*l.* of the value	20	0	0	—		
Mead or Metheglin, the gallon	0	6	7	—		
Medals, *viz.*						
——— of gold or silver, Free.						
——— of any other sort, for every 100*l.* of the value .	5	0	0	—		
Medlars, the bushel	0	5	0	—		
Melasses, the cwt.	1	3	9	—		
——— the produce of and imported from any British possession, the cwt.	0	10	0	—		
Melting Pots, for Goldsmiths, *See* Pots.						
Mercury prepared, for every 100*l.* of the value . . .	30	0	0	—		
Metal, *viz.*						
——— Bell Metal, the cwt.	1	0	0	—		
——— Leaf Metal (except Leaf Gold) the packet containing 250 leaves	0	0	8	—		
Metheglin, *See* Mead.						
Mill Boards, the cwt.	3	8	2	—		
Mill Stones, *See* Stones.						
Minerals, not otherwise enumerated or described, for every 100*l.* of the value	20	0	0	—		
——— Specimens of, *See* Specimens.						
Models of Cork or Wood, for every 100*l.* of the value .	5	0	0	—		
Morels, the lb.	0	2	9	—		
Moss, *viz.*						
——— Lichen Islandicus, or Liverwort, the lb. . . .	0	0	8	—		
——— Rock, for Dyers' use, the ton	0	15	0	—		
——— not otherwise enumerated or described, for every 100*l.* of the value	20	0	0	—		
Mother of Pearl Shells, for every 100*l.* of the value .	5	0	0	—		
Mules, each	0	10	0	—		
Mum, *See* Beer.						
Musical Instruments, for every 100*l.* of the value . .	20	0	0	—		
Musk, the oz.	0	5	0	0	3	4
Myrrh, the lb.	0	1	8	0	1	1
Myrtle Wax, *See* Wax.						
Napkinning, *See* Linen.						
Nardus Celtica, the cwt.	1	0	0	0	13	4
——— Indica, *See* Spikenard.						
Natron, *See* Alkali.						

	Duty. £	s.	d.	Drawback. £	s.	d.
Needle Work, *See* Embroidery.						
Nets, *viz.* old Fishing Nets, fit only for making paper or pasteboard, *See* Rags.						
Nicaragua Wood, the ton	0	15	0	—		
Nitre, *viz.* Cubic Nitre, the cwt.	0	0	6	—		
Nutmegs, the lb.	0	3	6	0	3	2
——, the produce of and imported from any British possession, the lb.	0	2	6	0	2	3
Nuts, *viz.*						
—— Cashew Nuts, the lb.	0	2	0	1	4	0
- - - the produce of any British possession, the lb.	0	0	1	—		
- - - Kernels, the lb.	0	0	2	—		
—— Castor Nuts, the lb.	0	0	4	—		
—— Coker or Coco Nuts, the produce of any British possession, the 120 nuts	0	5	0	—		
—— Chestnuts, the bushel	0	2	0	—		
—— Pistachio Nuts, the lb.	0	0	10	—		
—— Small Nuts, the bushel	0	2	0	—		
—— Walnuts, the bushel	0	2	0	—		
—— Nuts, not otherwise enumerated or described, for every 100*l.* of the value	20	0	0	—		
Nux Vomica, the lb.	0	2	6	—		
—— Extract or Preparation of, *See* Extract.						
Oakum, the cwt.	0	4	9	—		
Ochre or Oaker, the cwt.	0	6	9	—		
Oil, *viz.*						
— of Almonds, the lb.	0	0	10	—		
— of Amber or Succinum, the lb.	0	5	6	—		
— of Anniseed, the lb.	0	4	0	—		
— of Bay, the lb.	0	0	3	—		
— of Cajaputa, the oz.	0	1	0	—		
— of Caraway, the lb.	0	2	6	—		
— of Cassia, the oz.	0	1	0	—		
— of Castor, the lb.	0	1	0	—		
- - - - - the produce of and imported from any British possession, the lb.	0	0	6	—		
— Chemical Oil, not otherwise enumerated or described, the lb.	0	4	0	—		
— of Cinnamon, the oz.	0	1	0	—		
— of Cloves, the oz.	0	2	0	—		
— of Cocoa Nut, the cwt.	0	2	6	—		
— of Fennel, the lb.	0	4	0	—		
— Fish Oil, *See* Train Oil, in Oil.						
— of Hemp Seed, the tun	39	18	0	—		
— of Jessamine, the lb.	0	4	0	—		
— of Juniper, the lb.	0	2	0	—		
— of Lavender, the lb.	0	4	0	—		
— of Linseed, the tun	39	18	0	—		
— of Mace, the oz.	0	2	6	—		
— of Marjorum, the lb.	0	4	0	—		
— of Neroli, *See* Oil of Orange Flower.						
— of Nutmegs, the oz.	0	2	6	—		
— of Olives, the tun (*a*)	8	8	0	—		

(*a*) By 10 G. 4, c. 43, Schedule, Oil of Olives, imported in a ship belonging to any of the subjects of the King of the Two Sicilies, in addition to the duties imposed by any other act or acts, the tun, 1*l.* 1*s.*

	Duty. £	s.	d.	Drawback. £	s.	d.
Oil,—*continued.*						
— of Orange Flower, or Neroli, the oz.	0	2	0	—		
— of Palm, the cwt.	0	2	6	—		
— Perfumed Oil, not otherwise enumerated or described, the lb.	0	4	0	—		
— of Pine, the lb.	0	0	8	—		
— of Rape Seed, the tun	39	18	0	—		
— of Rhodium, the oz.	0	5	0	—		
— Rock Oil, the lb.	0	0	10	—		
— of Rosemary, the lb.	0	4	0	—		
— of Roses, *See* Otto of Roses.						
— of Rosewood, the oz.	0	5	0	—		
— Salad Oil, *See* Oil of Olives.						
— of Sandal Wood, the oz.	0	2	6	—		
— of Sassafras, the lb.	0	2	6	—		
— Seal Oil, *See* Train Oil, in Oil.						
— Seed Oil, not otherwise enumerated or described, the tun	39	18	0	—		
— of Spermaceti, *See* Train Oil, in Oil.						
— of Spike, the lb.	0	4	0	—		
— of Succinum, *See* Oil of Amber.						
— of Thyme, the lb.	0	4	0	—		
— Train Oil, Blubber, Spermaceti Oil, and Head Matter, *viz.*						
- - - - the produce of fish or creatures living in the sea, taken and caught by the crews of British ships, and imported direct from the fishery, or from any British possession, in a British ship, the tun	0	1	0	—		
- - - - the produce of fish or creatures living in the sea, of foreign fishing, the tun	26	12	0	—		
— of Turpentine, the lb.	0	0	8	—		
— of Vitriol, the lb.	0	0	6	—		
— Walnut Oil, the lb.	0	0	6	—		
— Whale Oil, *See* Train Oil, in Oil.						
— Oil, not particularly enumerated or described, nor otherwise charged with Duty, for every 100*l.* of the value	50	0	0	—		
Oker, *See* Ochre.						
Olibanum, the cwt.	2	0	0	1	4	2
Olives, the gallon	0	2	0	—		
Olive Wood, *viz.*						
——— the produce of and imported from any British possession, the ton	0	12	4	—		
——— of any other place, or if otherwise imported, the ton	8	9	6	—		
Onions, the bushel	0	3	0	—		
Opium, the lb.	0	9	0	0	6	0
——— Extract or Preparation of, *See* Extract.						
Opopanax Gum, *See* Gum.						
Orange Flower Water, the gallon	0	3	9	—		
Oranges and Lemons, *viz.*						
——— the chest or box, not exceeding the capacity of 5000 cubic inches	0	3	4	—		
——— the chest or box, exceeding the capacity of 5000 cubic inches, and not exceeding 7300 cubic inches	0	5	0	—		
——— the chest or box, exceeding the capacity of 7300 cubic inches, and not exceeding 14,000 cubic inches	0	10	0	—		

	Duty. £	s.	d.	Drawback. £	s.	d.
Oranges,—*continued.*						
—— for every 1000 cubic inches exceeding the above rate of 14,000 cubic inches, and so in proportion for any greater or less excess	0	0	10	—		
—— loose, the 1000	1	0	0	—		
—— or, and at the option of the importer, for every 100*l.* of the value	100	0	0	—		
—— Juice of, *See* Juice.						
—— Peel of, the lb.	0	0	6	—		
Orchal, Orchelia, or Archelia, the cwt.	0	6	0	—		
Ore, not otherwise enumerated or described, for every 100*l.* of the value	20	0	0	—		
—— of Gold or Silver, *See* Bullion.						
—— Specimens of, *See* Specimens.						
Orpiment, the cwt.	1	8	6	—		
Orris, or Iris Root, the cwt.	1	8	6	—		
Orsedew, the lb.	0	1	3	—		
Otto, or Attar, or Oil of Roses, the oz.	0	6	0	—		
Paddy, *See* Rice.						
Painters' Colours, not otherwise enumerated or described, for every 100*l.* of the value, by 10 G. 4. .	10	0	0	—		
Paintings on Glass, for every 100*l.* of the value . . .	30	0	0	—		
- - - - and further, for every cwt. of Glass .	4	0	0	—		
Paper, *viz.*						
—— Brown Paper, made of old rope or cordage only, without separating or extracting the pitch or tar therefrom, and without any mixture of other materials therewith, the lb.	0	0	3	—		
—— printed, painted, or stained Paper, or Paper Hangings, or Flock Paper, the yard square	0	1	0	—		
—— waste Paper, or Paper of any other sort, not particularly enumerated or described, nor otherwise charged with duty, the lb. . . .	0	0	9	—		
Parchment, the dozen sheets	0	10	0	—		
Pasteboards, the cwt.	3	8	2	—		
Pearl Barley, the cwt.	0	17	6	—		
Pearls, for every 100*l.* of the value	5	0	0	—		
Pears, the bushel	0	7	6	—		
—— dried, the bushel	0	10	0	—		
Pellitory, the lb.	0	0	6	0	0	4
Pelts, *See* Skins.						
Pencils, for every 100*l.* of the value	30	0	0	—		
—— of Slate, for every 100*l.* of the value	20	0	0	—		
Pens, for every 100*l.* of the value	30	0	0	—		
Pepper of all sorts, the produce of and imported from any British possession, the lb.	0	1	0	—		
—— of any other place, or if otherwise imported, the lb.	0	1	6	—		
Perfumed Dust, *See* Powder.						
Perry, the tun	22	13	8	—		
Pewter, Manufactures of, not otherwise enumerated or described, for every 100*l.* of the value	20	0	0	—		
Pickles of all sorts, not otherwise enumerated or described, including the vinegar, the gallon	0	6	0	—		
Pictures, *viz.*						
—— under two feet square, the picture	3	8	0	—		
—— two feet square and under four feet square, the picture	6	16	0	—		

	Duty.			Drawback.		
	£	s.	d.	£	s.	d.
Pictures,—*continued*						
——— four feet square or upwards, the picture . .	10	4	0	—		
Pimento, *viz.*						
——— the produce of any British possession, the lb.	0	0	5	—		
——— the produce of any other place, the lb. . .	0	1	3	—		
Pink Root, the lb.	0	0	10	0	0	6
Pitch, the cwt.	0	0	10	—		
—— the produce of any British possession, the cwt. .	0	0	9	—		
—— Burgundy Pitch, the cwt.	0	14	3	—		
—— Jews' Pitch, *See* Bitumen Judaicum.						
Plants, Shrubs, and Trees, alive, Free.						
Plaster of Paris, the cwt.	0	1	0	—		
Plate, *viz.*						
—— battered, fit only to be re-manufactured, *See* Bullion.						
—— of Gold, the oz. Troy	3	16	9	—		
—— of Silver gilt, the oz. Troy	0	6	4	—		
- - - - Part gilt, the oz. Troy	0	6	0	—		
- - - - ungilt, the oz. Troy	0	4	6	—		
Platina, the oz.	0	1	0	—		
——— Ore of, for every 100*l.* of the value	5	0	0	—		
Platting or other Manufactures to be used in or proper for making hats or bonnets, *viz.*						
——— of Bast, Chip, Cane, or Horse Hair, the lb. .	1	0	0	—		
——— of Straw, the lb.	0	17	0	—		
Plums, dried, the lb.	0	1	3	—		
Polishing Rushes, for every 100*l.* of the value . . .	20	0	0	—		
——— Stones, *See* Stones.						
Pomatum, for every 100*l.* of the value	30	0	0	—		
Pomegranates, the 1000	1	10	0	—		
——— Peels of, the cwt.	0	15	0			
Poppies' Head, *See* Capita Papaverum.						
Porcelain, *See* China Ware.						
Potatoes, the cwt.	0	2	0			
Pots, *viz.*						
—— Melting Pots for goldsmiths, the 100	0	3	2			
—— of Stone, for every 100*l.* of the value	30	0	0			
Powder, *viz.*						
——— Hair Powder, the cwt.	9	15	0			
- - - perfumed, or perfumed Dust, the cwt. .	13	13	0	—		
——— Powder not otherwise enumerated or described, that will serve for the same uses as starch, the cwt.	9	10	0	—		
Precious Stones, *See* Jewels.						
Prints and Drawings, *viz.*						
—— plain, each	0	0	1	—		
—— coloured, each	0	0	2			
Prunelloes, the lb.	0	1	3			
Prunes, the cwt.	1	7	6			
Quassia, the cwt.	8	17	6			
—— Extract or Preparation of, *See* Extract.						
Quern Stones, *See* Stones.						
Quicksilver, the lb.	0	0	6	0	0	3
Quills, *viz.*						
—— Goose Quills, the 1000	0	2	6			
—— Swan Quills, the 1000	0	12	0			
Quinces, the 100	0	4	0			
Quinine, Sulphate of, the oz.	0	2	6			

	Duty.			Drawback.		
	£	s.	d.	£	s.	d.
Radix, *viz.*						
——— Contrayervæ, the lb.	0	1	8	0	1	1
——— Enulæ Campanæ, the cwt.	0	13	6	0	9	0
——— Eringii, the lb.	0	0	6	0	0	4
——— Ipecacuanhæ, the lb.	0	4	0	0	2	8
——— Rhataniæ, the lb.	0	2	0	0	1	4
- - - - Extract or Preparation of, *See* Extract.						
——— Senekæ, the lb.	0	1	9	0	1	2
——— Serpentariæ, or Snake Root, the lb.	0	1	9	0	1	2
Rags, *viz.*						
—— old Rags, old Ropes, or Junk, or old Fishing Nets, fit only for making Paper or Pasteboard, the ton	0	5	0	—		
—— Woollen Rags, fit only for manure, the ton	0	7	6	—		
Raisins, *viz.* (*b*)						
——— Denia, or Lexia, the cwt.	1	0	0	0	18	0
——— of the Sun, the cwt.	2	2	6	1	18	0
——— of any other sort, the cwt.	1	2	0	1	0	0
——— of all sorts, the produce of any British possession, the cwt.	0	10	0	0	9	0
Rape Cakes, the cwt.	0	0	2			
—— of Grapes, the ton	13	6	0			
Ratafia, *See* Spirits.						
Red Wood, or Guinea Wood, the ton	0	15	0			
Rennett, the gallon	0	0	6			
Resina Jalappæ, the lb.	0	6	9	0	4	6
Rhatany Root, *See* Radix Rhataniæ.						
Rhinehurst, the cwt.	0	14	3	0	9	6
Rhubarb, the lb.	0	4	0	0	2	8
———— the produce of any British possession, the lb.	0	2	6	0	1	8
Rice, *viz.*						
—— not being rough and in the husk, the cwt.	0	15	0			
—— rough and in the husk, or Paddy, the bushel	0	2	6			
—— the produce of any British possession,						
- - - not being rough and in the husk, the cwt.	0	5	0			
- - - rough and in the husk, or Paddy, the bushel	0	0	7½			
Rocou, *See* Annotto.						
Ropes, new, *See* Cordage.						
——— old, *See* Rags.						
Rosewood, the cwt.	1	0	0	—		
Rosin, or Colophonia, the cwt.	0	4	9	—		
—— the produce of any British possession, the cwt.	0	3	2	—		
Rubies, *See* Jewels.						
Saccharum Saturni, the lb.	0	0	10	0	0	6
Safflower, the cwt.	0	5	0	—		
Saffron, the lb.	0	2	6	—		
Sago, *viz.*						
—— Pearl, the cwt., by 10 G. 4.	0	15	0	—		
—— Common, the cwt.	0	15	0	—		
—— Powder, the cwt., by 10 G. 4.	0	15	0	—		
—— - - - - from any British possession	0	10	0	—		
Sails, *See* Linen.						
Sal, *viz.*						
—— Ammoniac, the lb.	0	0	3	—		
—— Gem, the cwt.	0	8	0	—		
—— Limonum, the lb.	0	4	9	—		
—— Prunelle, the lb.	0	0	6	—		

(*b*) By 10 G. 4. c. 43, Schedule, Raisins, not being Raisins of the Sun, and not being the produce of any British possession, the cwt., 1*l*.

	Duty. £	s.	d.	Drawback. £	s.	d.
Sal,—*continued.*						
—— Succini, the lb.	0	3	2	—		
Salep, or Salop, the lb.	0	1	3	0	0	10
Salt, Free.						
Saltpetre, the cwt.	0	0	6	—		
Sanguis Draconis, the lb.	0	1	8	0	1	1
Santa Maria Wood, for every 100*l.* of the value	20	0	0	—		
—— Sapan Wood, the ton	0	15	0	—		
Sarsaparilla, the lb.	0	1	3	0	0	10
———— the produce of any British possession, the lb.	0	1	0	0	0	10
Sassafras, the cwt.	0	6	4	—		
Saunders, *viz.*						
———— Red, the ton	0	12	0	—		
———— White or yellow, the lb.	0	0	10	—		
Sausages or Puddings, the lb.	0	1	3	—		
Scaleboards, the cwt.	3	8	2	—		
Scammony, the lb.	0	6	4	0	4	2
Scilla, *See* Squills.						
Seed, *viz.*						
—— Acorns, the bushel	0	1	0	—		
—— Ammi or Ammios Seed, the lb.	0	0	6	—		
—— Anniseed, the cwt.	3	0	0	—		
—— Burnet Seed, the cwt.	1	0	0	—		
—— Canary Seed, the cwt.	3	0	0	—		
—— Caraway Seed, the cwt.	1	10	0	—		
—— Carrot Seed, the lb.	0	0	9	—		
—— Carthamus Seed, the lb.	0	0	6	—		
—— Castor Seed, the lb.	0	0	4	—		
—— Cevadilla Seed, *See* Sabadilla Seed.						
—— Clover Seed, the cwt.	1	0	0	—		
—— Cole Seed, from the 5th January 1826 to the 6th July 1826, the last	5	0	0	—		
- - - from and after the 5th July 1826, the last	0	10	0	—		
—— Coriander Seed, the cwt.	0	15	0	—		
—— Cummin Seed, the cwt.	1	0	0	—		
—— Fennel Seed, the lb.	0	0	9	—		
—— Fennugreek Seed, the cwt.	0	9	6	—		
—— Flax Seed, *viz.*						
- - - until the 6th April 1826, the bushel	0	0	5	—		
- - - after the 5th April 1826, the quarter	0	1	0	—		
—— Forest Seed, the lb.	0	0	6	—		
—— Garden Seed not particularly enumerated or described, nor otherwise charged with duty, the lb.	0	0	6	—		
—— Grass Seed of all sorts, the cwt.	1	0	0	—		
—— Hemp Seed, the quarter	2	0	0	—		
- - - the produce of and imported from any British possession, the quarter	0	1	0	—		
—— Leek Seed, the lb.	0	1	6	—		
—— Linseed, *viz.*						
- - - - until the 6th of April 1826, the bushel	0	0	5	—		
- - - - after the 5th of April 1826, the bushel	0	1	0	—		
—— Lucerne Seed, the cwt.	1	0	0	—		
—— Maw Seed, the cwt.	3	0	0	—		
—— Millet Seed, the cwt.	0	11	6	—		
—— Mustard Seed, the bushel	0	8	0	—		
—— Onion Seed, the lb.	0	1	6	—		
—— Parsley Seed, the lb.	0	0	1	—		
—— Peas, when prohibited to be imported as corn, the bushel	0	7	6	—		
—— Piony or Peony Seed, the lb.	0	0	6	—		

	Duty £	Duty s.	Duty d.	Drawback £	Drawback s.	Drawback d.
Seed,—*continued.*						
—— Quince Seed, the lb.	0	3	0		—	
—— Rape Seed, from the 5th January 1826 to the 6th July 1826, the last	5	0	0		—	
- - - from and after the 5th July 1826, the last	0	10	0		—	
—— Sabadilla or Cevadilla Seed, the lb.	0	1	0		—	
—— Shrub or Tree Seed, not otherwise enumerated, the lb.	0	0	6		—	
—— Trefoil Seed, the cwt.	1	0	0		—	
—— Worm Seed, the lb.	0	1	6	0	1	0
—— All Seeds not particularly enumerated or described, nor otherwise charged with duty, commonly made use of for extracting oil therefrom, from the 5th January 1826, to the 6th July 1826, the last	5	0	0		—	
- - - from and after the 5th July 1826, the last .	0	10	0		—	
—— All other Seed not particularly enumerated or described, nor otherwise charged with duty, for every 100*l.* of the value	30	0	0		—	
Segars, *See* Tobacco, manufactured.						
Sena, the lb.	0	1	3	0	0	10
Shaving for Hats, *See* Platting.						
Ships to be broken up, with their tackle, apparel, and furniture (except sails), *viz.*						
—— Foreign Ships or Vessels, for every 100*l.* of the value	50	0	0		—	
—— British Ships or Vessels entitled to be registered as such, not having been built in the United Kingdom, for every 100*l.* of the value . . .	15	0	0		—	
Shrubs, *See* Plants.						
Shumach, the cwt.	0	1	0		—	
Silk, *viz.*						
—— Knubs or Husks of Silk, the lb.	0	0	3		—	
—— Raw Silk, the lb.	0	0	3		—	
—— Thrown Silk, dyed or not, the lb.	0	7	6		—	
—— Waste or Floss Silk, not otherwise enumerated or described, the lb.	0	0	3		—	
—— Manufactures of Silk, or of Silk and any other material, not particularly enumerated, or otherwise charged with duty, from and after the 5th July 1826, for every 100*l.* of the value . . .	30	0	0		—	
Silk Worm Gut, for every 100*l.* of the value	20	0	0		—	
Skates for sliding, for every 100*l.* of the value . . .	20	0	0		—	
Skins, Furs, Pelts, and Tails, *viz.*						
—— Badger Skins, undressed, the skin	0	1	6	0	1	4
—— Bear Skins, undressed, the skin	0	4	6		—	
- - - - - - undressed, imported from any British possession in America, the skin .	0	2	6		—	
—— Beaver Skins, undressed, the skin	0	0	8		—	
- - - - - - undressed, imported from any British possession in America, the skin .	0	0	4		—	
—— Calabar Skins, *See* Squirrel Skins.						
—— Calf Skins and Kip Skins in the hair, not tanned, tawed, curried, or in any way dressed,						
- - - - - dry, the cwt.	0	4	8		—	
- - - - - wet, the cwt.	0	2	4		—	
- - - - - the produce of and imported from the West Coast of Africa, each skin, not exceeding seven lbs. weight, the cwt.	0	2	4		—	
- - - - - tanned and not otherwise dressed, the lb.	0	1	0		—	

	Duty.			Drawback.		
Skins,—*continued.*	£	s.	d.	£	s.	d.
—— Cat Skins, undressed, the skin	0	0	6		—	
- - - - - undressed, imported from any British possession in America, the skin .	0	0	3		—	
—— Coney Skins, undressed, the 100 skins	0	1	0		—	
—— Deer Skins, undressed, the skin	0	0	2		—	
- - - - - undressed, the produce of and imported from any British possession in America, the 100 skins	0	1	0	0	0	6
- - - - - Indian, half-dressed, the skin . . .	0	0	8		—	
- - - - - undressed, or shaved, the skin . . .	0	0	4		—	
—— Dog Skins in the hair, not tanned, tawed, or in any way dressed, the dozen skins	0	0	10		—	
—— Dog Fish Skins, undressed, the dozen skins . .	0	5	2		—	
- - - - - undressed, of British taking, and imported direct from Newfoundland, the dozen skins	0	0	1		—	
—— Elk Skins in the hair, not tanned, tawed, curried, or in any way dressed, the skin	0	1	0		—	
—— Ermine Skins, undressed, the skin	0	0	8	0	0	7
—— Fisher Skins, undressed, the skin	0	1	0		—	
- - - - - undressed, imported from any British possession in America, the skin .	0	0	6		—	
—— Fitch Skins, undressed, the dozen skins . . .	0	3	2	0	2	10
—— Fox Skins, undressed, the skin	0	0	8		—	
- - - - - undressed, imported from any British possession in America, the skin . .	0	0	4		—	
- - Tails, undressed, for every 100*l.* of the value	20	0	0		—	
—— Goat Skins, *viz.*						
- - - - - raw or undressed, the dozen skins . .	0	2	10		—	
- - - - - tanned, the dozen skins	2	0	0		—	
—— Hare Skins, undressed, the 100 skins	0	1	0		—	
—— Husse Skins, undressed, the skin	0	0	6		—	
—— Kid Skins in the hair, the 100 skins, by 10 G. 4.	0	0	4		—	
- - - - - dressed, the 100 skins	0	10	0		—	
—— Kip Skins, *See* Calf Skins.						
—— Lamb Skins, *viz.*						
- - - - - undressed, in the wool, the 100 skins	0	0	4		—	
- - - - - tanned or tawed, the 100 skins . .	0	10	0		—	
- - - - - dressed in oil, the 100 skins . . .	4	0	0		—	
—— Leopard Skins, undressed, the skin	0	9	6	0	9	0
—— Lion Skins, undressed, the skin	0	6	0		—	
—— Martin Skins, undressed, the skin	0	0	6		—	
- - - - - undressed, imported from any British possession in America, the skin .	0	0	3		—	
- - - - - undressed, the produce of any British possession within the limits of the East India Company's charter, the skin	0	1	3		—	
- - - Tails, undressed, the 100 tails	0	16	3	0	15	6
—— Mink Skins, undressed, the skin	0	0	4		—	
- - - - - undressed, imported from any British possession in America, the skin . .	0	0	2		—	
- - - - - dressed, the skin	0	2	0		—	
—— Mole Skins, undressed, the dozen skins . . .	0	0	6	0	0	5
—— Musquash Skins, undressed, the 100 skins . .	0	1	0		—	
—— Nutria Skins, undressed, the 100 skins	0	12	6		—	
—— Otter Skins, undressed, the skin	0	1	6		—	
- - - - - undressed, imported from any British possession in America, the skin . .	0	1	0		—	

	Duty. £	s.	d.	Drawback. £	s.	d.
Skins,—*continued.*						
—— Ounce Skins, undressed, the skin	0	7	6	—		
—— Panther Skins, undressed, the skin	0	9	6	—		
—— Pelts of Goats, undressed, the dozen pelts	0	3	0	—		
- - - - - - dressed, the dozen pelts	0	6	0	—		
- - of all other sorts, undressed, the 100 pelts	0	17	0	—		
—— Racoon Skins, undressed, the skin	0	0	2	—		
- - - - undressed, imported from any British possession in America, the skin	0	0	1	—		
—— Sable Skins, undressed, the skin	0	8	4	0	7	6
- - - - Tails or Tips of Sable, undressed, the piece	0	1	3	0	1	1
—— Seal Skins in the hair, not tanned, tawed, or in any way dressed, the skin	0	0	3	—		
- - - - of British taking, and imported directly from Newfoundland, the skin	0	0	1	—		
- - - - taken in any foreign fishery by persons not being British subjects, the skin	0	1	0	—		
—— Sheep Skins, undressed, in the wool, the dozen skins	0	1	0	—		
- - - - - - tanned or tawed, the 100 skins	2	0	0	—		
- - - - - - dressed in oil, the 100 skins	4	0	0	—		
—— Squirrel or Calabar Skins, undressed, the 100 skins	0	11	6	0	10	4
- - - tawed, the 100 skins	0	17	6	—		
- - - Tails, undressed, for every 100*l.* of the value	20	0	0	—		
—— Swan Skins, undressed, the skin	0	1	0	—		
—— Tiger Skins, undressed, the skin	0	9	6	0	8	6
—— Weasel Skins, undressed, the 100 skins	0	4	9	0	4	3
—— Wolf Skins, undressed, the skin	0	2	0	—		
- - - - undressed, imported from any British possession in America, the skin	0	1	0	—		
- - - - tawed, the skin	0	17	6	—		
—— Wolverings, undressed, the skin	0	1	0	—		
- - - - undressed, imported from any British possession in America, the skin	0	0	6	—		
—— Skins and Furs, or Pieces of Skins and Furs, raw or undressed, not particularly enumerated or described, nor otherwise charged with duty, for every 100*l.* of the value	20	0	0	—		
—— Skins and Furs, or Pieces of Skins and Furs, tanned, tawed, curried, or in any way dressed, not particularly enumerated or described, nor otherwise charged with duty, for every 100*l.* of the value	75	0	0	—		
Slate, *See* Stone.						
Slick Stones, *See* Stone.						
Smalts, *viz.*						
—— from the 5th January 1826 to the 6th January 1827, the lb.	0	0	8½	—		
—— from the 5th January 1827 to the 6th January 1828, the lb.	0	0	7½	—		
—— after 5th January 1828, the lb.	0	0	6	—		
Snuff, the lb.	0	6	0	—		
Soap, *viz.*						
—— hard, the cwt.	4	10	0	—		
—— soft, the cwt.	3	11	3	—		
—— the produce of any British possession in the East Indies, *viz.*						
- - - hard, the cwt.	1	8	0	—		
- - - soft, the cwt.	1	3	0	—		

	Duty. £	s.	d.	Drawback. £	s.	d.
Soaper's Waste, the ton	0	3	2	—		
Soda, *See* Alkali.						
Spa Ware, for every 100*l.* of the value	30	0	0	—		
Specimens of such Minerals, Fossils, or Ores, which are not particularly enumerated or described, nor otherwise charged with duty, each specimen not exceeding in weight 14 lbs. Free.						
——— exceeding in weight 14 lbs. each, for every 100*l.* of the value	5	0	0	—		
——— illustrative of natural history, not otherwise enumerated or described, Free.						
Speckled Wood, *viz.*						
——— the produce of and imported from any British possession, the ton	0	16	3	—		
——— of any other place, or if otherwise imported, the ton	8	14	2	—		
Spelter, *viz.*						
——— until the 6th July 1826, the cwt.	0	14	0	—		
——— from the 5th July 1826 to the 6th July 1827, the cwt.	0	12	0	—		
——— after the 5th July 1827, the cwt.	0	10	0	—		
Spermaceti, fine, the lb.	0	1	6	—		
Spikenard, or Nardus Indica, the lb.	0	2	9	0	1	10
Spirits or Strong Waters of all sorts, *viz.*						
——— For every gallon of such spirits or Strong Waters of any strength not exceeding the strength of proof by Sikes's Hydrometer, and so in proportion for any greater strength than the strength of proof, and for any greater or less quantity than a gallon, *viz.*						
- - - not being Spirits or Strong Waters, the produce of any British possession in America, or any British possession within the limits of the East India Company's charter, and not being sweetened spirits, or spirits mixed with any article so that the degree or strength thereof cannot be exactly ascertained by such hydrometer	1	2	6	—		
- - - Spirits or Strong Waters, the produce of any British possession in America, not being sweetened spirits or spirits, so mixed as aforesaid	0	8	6	—		
- - - Spirits or Strong Waters, the produce of any British possession within the limits of the East India Company's charter, not being sweetened spirits, or spirits so mixed as aforesaid	1	0	0	—		
- - - Spirits, Cordials, or Strong Waters respectively (not being the produce of any British possession in America), sweetened or mixed with any article so that the degree of strength thereof cannot be exactly ascertained by such hydrometer	1	10	0	—		
- - - Spirits, Cordials, or Strong Waters respectively, being the produce of any British possession in America, sweetened or mixed with any article so that the degree of strength thereof cannot be exactly ascertained by such hydrometer	1	0	0	—		

	Duty.			Drawback.		
Spirits,—*continued.*	£	s.	d.	£	s.	d.
——— Foreign Liquors—Derelict, *See* Derelict.						
Sponge, the lb.	0	2	0	0	1	4
——— the produce of any British possession, the lb. .	0	0	6		—	
Squills, dried, the cwt.	1	0	0		—	
——— not dried, the cwt.	0	5	0		—	
Starch, the cwt.	9	10	0		—	
Stavesacre, the cwt.	1	8	0	0	18	8
Steel, or any Manufactures of Steel, not otherwise enumerated or described, for every 100*l.* of the value .	20	0	0		—	
Stibium, *See* Antimony.						
Sticks, *viz.* Walking Sticks, *See* Canes.						
Stone, *viz.*						
——— Burrs for Mill-stones, the 100	3	16	0		—	
——— Dog Stones not exceeding four feet in diameter, above six, and under twelve inches in thickness, the pair	6	3	6		—	
——— Emery Stones, the cwt.	0	2	0		—	
——— Filtering Stones, for every 100*l.* of the value .	50	0	0		—	
——— Flint Stones for Potters, the ton	0	2	6		—	
——— Grave Stones of Marble, polished, each not containing more than two feet square, the foot square, superficial measure . . .	0	2	6		—	
- - - unpolished, the foot square, superficial measure	0	0	10		—	
- - - not of marble, polished or unpolished, the foot square, superficial measure . . .	0	0	6		—	
——— Lime Stone, for every 100*l.* of the value . . .	20	0	0		—	
——— Marble Blocks, the solid foot	0	3	0		—	
——— Marble, in any way manufactured (except Grave Stones and Paving Stones, each not containing more than two feet square), the cwt.	0	3	0		—	
——— Marble Paving Stones, polished, each not containing more than two feet square, the foot square, superficial measure	0	0	10		—	
- - - rough, the foot square, superficial measure	0	0	6		—	
——— Mill Stones above four feet in diameter, if twelve inches in thickness or upwards, the pair . .	11	8	0		—	
——— Paving Stones, not of marble, the 100 feet square, superficial measure	0	12	0		—	
——— Pebble Stones, the ton	0	3	6		—	
——— Polishing Stones, for every 100*l.* of the value .	20	0	0		—	
——— Pummice Stones, the ton	1	13	4		—	
——— Quern Stones under three feet in diameter, and not exceeding six inches in thickness, the pair	0	8	9		—	
- - - three feet in diameter, and not above four feet in diameter, and not exceeding six inches in thickness, the pair	0	17	6		—	
——— Rag Stones, for every 100*l.* of the value . . .	20	0	0		—	
——— Slate, the produce of the Islands of Guernsey, Jersey, Sark, Alderney, or Man, and imported from those islands respectively, for every 100*l.* of the value	26	8	0		—	
——— Slates, the produce of any other country, not otherwise enumerated or described, for every 100*l.* of the value	66	10	0		—	
——— Slates in Frames, the dozen	0	3	0		—	
——— Slick Stones, the 100	0	8	0		—	
——— Stone, sculptured, or Mosaic Work, the cwt. . .	0	2	6		—	
——— Stone to be used for the purpose of lithography, the cwt.	0	3	0		—	

	Duty. £	s.	d.	Drawback. £	s.	d.
Stones, — *continued*						
—— Whetstones, the 100	0	8	9	—		
—— Stones not particularly enumerated or described, nor otherwise charged with duty, for every 100*l.* of the value	66	10	0	—		
Note.—If any Statue, Group of Figures, or other Stone or Marble Ornament, carved out of the same block, shall exceed one ton weight, the duty to be charged thereon shall be estimated at the rate payable for one ton weight, and no more.						
Storax or Styrax, *viz.*						
—— Calamita, the lb.	0	2	0	0	1	4
—— Liquida, the lb.	0	3	4	0	2	2
—— in the Tear or Gum, the lb.	0	8	4	0	5	6
Succades, *viz.*						
—— the produce of any British possession in America, the lb.	0	0	3	—		
—— the produce of any British possession within the limits of the East India Company's charter, the lb.	0	0	6	—		
—— the produce of any other place, the lb.	0	3	2	—		
Succinum, the lb.	0	1	8	0	1	1
Sugar, Brown or Muscovado, or clayed, not being refined, *viz.*						
—— the growth, produce, or manufacture of any British possession within the limits of the East India Company's charter, the cwt.	1	17	0	—		
—— the growth, produce, or manufacture of any British possession in America, the cwt.	1	7	0	—		
—— of any other place, the cwt.	3	3	0	—		
—— refined, the cwt.	8	8	0	—		
Sugar Candy, *viz.*						
—— Brown, the cwt.	5	12	0	—		
—— White, the cwt.	8	8	0	—		
Sulphate of Quinine, *See* Quinine.						
Sulphur Impressions, for every 100*l.* of the value	5	0	0	—		
—— Vivum, *See* Brimstone.						
Sumack, *See* Shumack.						
Sweep-washers' Dirt, containing Bullion, *See* Bullion.						
Sweet Wood, *viz.*						
—— the produce of and imported from any British possession, the ton	0	16	3	—		
—— of any other place, or if otherwise imported, the ton	10	13	0	—		
Tails, *viz.*						
—— Buffalo, Bull, Cow, or Ox Tails, the 100	0	6	0	—		
—— Fox Tails, —— Martin Tails, —— Sable Tails, —— Squirrel or Calabar Tails, } *See* Skins.						
Talc, the lb.	0	0	8	—		
Tallow, the cwt.	0	3	2	—		
Tamarinds, the lb.	0	0	8	—		
—— the produce of any British possession within the limits of the East India Company's charter, the lb.	0	0	6	—		
—— the produce of any British possession in America, or on the West Coast of Africa, the lb.	0	0	2	—		

	Duty. £	s.	d.	Drawback £	s.	d.
Tapioca, or Tapioca Powder, the cwt.	1	10	0	—		
Tar, *viz.*						
—— the last, containing 12 barrels, each barrel not exceeding 31½ gallons	0	15	0	—		
—— the produce of any British possession, the last containing 12 barrels, each barrel not exceeding 31½ gallons	0	12	0	—		
—— Barbadoes Tar, the cwt., by 10 G. 4.	0	2	6	—		
Tares, the quarter	0	10	0	—		
Tarras, the bushel	0	1	3	—		
Tea,—subject only to the duty of excise.						
Teasles, the 1,000	0	1	0	—		
Teeth, *viz.*						
—— Elephants' Teeth, the cwt.	1	0	0	—		
—— Sea Cow, Sea Horse, or Sea Morse Teeth, the cwt.	3	4	0	—		
Telescopes, for every 100*l.* of the value	30	0	0	—		
Terra, *viz.*						
—— Japonica or Catechu, the cwt.	0	3	0	—		
—— Sienna, the cwt.	1	11	8	—		
—— Umbra, the cwt.	0	12	0	—		
—— Verde, the cwt.	0	16	0	—		
Thread, *viz.*						
—— Bruges Thread, the dozen lbs.	0	15	0	—		
—— Cotton Thread, *See* Cotton Manufactures.						
—— Outnal Thread, the dozen lbs.	0	15	0	—		
—— Pack Thread, the cwt.	0	15	0	—		
—— Sisters Thread, the lb.	0	4	0	—		
—— Whited Brown Thread, the dozen lbs.	0	18	0	—		
—— not otherwise enumerated or described, for every 100*l.* of the value	25	0	0	—		
Tiles of all sorts, for every 100*l.* of the value	50	0	0	—		
Tin, the cwt.	2	10	0	—		
— Manufactures of, not otherwise enumerated or described, for every 100*l.* of the value	20	0	0	—		
Tincal, *See* Borax						
Tin Foil, for every 100*l.* of the value	25	0	0	—		
Tobacco, *viz.*						
—— of the growth or produce of the United States of America, or of any of the territories or dominions of the Emperor of Russia, or of the Ottoman or Turkish Empire, or from any port or place within the limits of the East India Company's charter, unmanufactured, the lb.	0	4	0	—		
—— of the growth or produce of any British possession in America, unmanufactured, the lb.	0	3	9	—		
—— of the growth or produce of any other place, unmanufactured, the lb.	0	6	0	—		
—— manufactured, or Segars, the lb.	0	18	0	—		
—— manufactured in the United Kingdom, at or within two miles of any port into which Tobacco may be imported, made into Shag, Roll, or Carrot Tobacco, the lb.	—			0	3	6
Tobacco Pipes, for every 100*l.* of the value	30	0	0	—		
Tongues, the dozen	0	3	0	—		
Tooth Powder, for every 100*l.* of the value	30	0	0	—		
Ternsal or Turnsole, the cwt.	0	5	0	—		
Tortoise Shell, unmanufactured, the lb.	0	2	0	—		

	Duty.			Drawback.		
Tortoise Shell,—*continued.*	£	s.	d.	£	s.	d.
———— unmanufactured, the produce of any British possession in America, or on the West Coast of Africa, the lb.	0	1	0	—		
Touch Stones, for every 100*l.* of the value	20	0	0	—		
Tow, *See* Flax.						
Toys, for every 100*l.* of the value	20	0	0	—		
Treacle of Venice, the lb.	0	3	6	—		
Trees, *See* Plants.						
Truffles, the lb.	0	2	6	—		
Turbith, the lb.	0	2	6	0	1	8
Turmeric, the lb.	0	0	3	—		
———— the produce of any British possession in America, or on the West Coast of Africa, the lb.	0	0	2	—		
Turnery, not otherwise enumerated or described, for every 100*l.* of the value	30	0	0	—		
Turnsole, *See* Tornsal.						
Turpentine, *viz.*						
———— not being of greater value than *s.* the cwt. thereof, the cwt.	0	4	4	—		
———— being of greater value than 12*s.* the cwt. thereof, and not more than 15*s.* the cwt.	0	5	4	—		
———— of Venice, Scio, or Cyprus, the lb.	0	0	10	0	0	6
Tutiæ Lapis, *See* Lapis.						
Twine, the cwt.	1	11	0	—		
Valonia, the cwt.	0	1	6	—		
Vanelloes, the lb.	0	16	8	—		
Varnish, not otherwise enumerated or described, for every 100*l.* of the value	30	0	0	—		
Vases, *viz.*						
———— ancient, not of Stone or Marble, for every 100*l.* of the value	5	0	0	—		
Vellum, the skin	0	7	2	—		
Verdigris of all sorts, the lb.	0	2	0	—		
Verjuice, the tun	73	12	9	—		
Vermicelli, the lb.	0	0	8	—		
Vermillion, the lb.	0	1	0	—		
Vetches, *See* Tares.						
Vinegar, or Acetous Acid, the tun	18	18	0	—		
Vinelloes, *See* Vanelloes.						
Wafers, the lb.	0	1	3	—		
Washing Balls, the lb.	0	1	8	—		
Watches of Gold, Silver, or other Metal, for every 100*l.* of the value	25	0	0	—		
Watch Glasses, for every 100*l.* of the value	20	0	0	—		
- - - - and further, for every cwt.	4	0	0	—		
Water, *viz.*						
———— Arquebusade, ———— Citron, ———— Cordial, ———— Hungary, ———— Lavender, } *See* Spirits.						
———— Cologne Water, the flask, thirty of such flasks containing not more than one gallon	0	1	0	—		
———— Mineral or Natural Water, the dozen bottles or flasks, each bottle or flask not exceeding three pints	0	4	0	—		
———— Strong Water, *See* Spirits.						

	Duty.			Drawback.		
	£	s.	d.	£	s.	d.
Wax, *viz.*						
—— Bees, unbleached, the cwt.	1	10	0	—		
———— in any degree bleached	3	0	0	—		
———— from any British possession, unbleached	0	10	0	—		
———————— bleached	1	0	0	—		
- - - - - the produce of and imported from any British possession, the cwt.	2	6	6	—		
- - - - - White, or manufactured, the cwt.	6	3	6	—		
—— Myrtle Wax, the lb.	0	1	0	—		
—— Sealing Wax, for every 100*l.* of the value	30	0	0	—		
Weld, the cwt.	0	1	0	—		
Whale Fins, *viz.*						
———— taken and caught by the crew of a British ship, and imported direct from the fishery, or from any British possession, in a British ship, the ton	1	0	0	—		
———— of Foreign fishing, the ton	95	0	0	—		
Wheat, the produce of any British possession in North America, and imported directly from thence, the quarter	0	5	0	—		
Whipcord, the lb.	0	1	0	—		
Wine, *viz.*						
—— the produce of his Majesty's settlement of the Cape of Good Hope, or the territories or dependencies thereof, imported directly from thence, until the 1st of January 1833, the gallon	0	2	5	0	2	5
- - - after the 1st of January 1833, the gallon	0	3	0	0	3	0
—— French Wine, the gallon	0	7	3	0	7	3
—— all Wine, not otherwise enumerated or described, the gallon	0	4	10	0	4	10
Wine Lees, subject to the same duty as Wine, but no drawback is allowed on the Lees of Wine exported.						
Wire, *viz.*						
—— Brass or Copper, not otherwise enumerated or described, the cwt.	2	10	0	—		
—— Gilt or Plated, for every 100*l.* of the value	25	0	0	—		
—— Iron, not otherwise enumerated or described, the cwt.	1	0	0	—		
—— Latten, the cwt.	1	0	0	—		
—— Silver, for every 100*l.* of the value	25	0	0	—		
—— Steel, the lb.	0	1	10	—		
Woad, the cwt.	0	3	0	—		
Wood, *viz.*						
—— Anchor Stocks, the piece	0	8	4	—		
- - - - of the growth and production of any British possession in America, and imported directly from thence, the piece	0	0	10	—		
—— Balks, *viz.*						
- - - under 5 inches square, and under 24 feet in length, the 120	18	2	7	—		
- - - under 5 inches square, and 24 feet in length or upwards, the 120	27	0	0	—		
- - - 5 inches square or upwards are subject and liable to the duties payable on Fir Timber.						
—— Balks of the growth and produce of any British possession in America, and imported directly from thence, *viz.*						
- - - under 5 inches square, and under 24 feet in length, the 120	3	5	0	—		

	Duty. £ s. d.	Drawback. £ s. d.
Wood,—*continued.*		
Balks, under 5 inches square, and 24 feet in length or upwards, the 120	4 17 6	—
- - - 5 inches square or upwards are subject and liable to the duties payable on Fir Timber.		
——— Battens, imported into Great Britain, *viz.*		
- - - 6 feet in length, and not exceeding 16 feet in length, not above 7 inches in width, and not above 2¾ inches in thickness, the 120	10 0 0	—
- - - exceeding 16 feet in length, and not exceeding 21 feet in length, not above 7 inches in width, and not exceeding 2¾ inches in thickness, the 120 . .	11 10 0	—
- - - exceeding 21 feet in length, not above 7 inches in width, or if exceeding 2¾ inches in thickness, the 120 . . .	20 0 0	—
——— Battens of the growth and produce of any British possession in America, and imported directly from thence into Great Britain, *viz.*		
- - - 6 feet in length, and not exceeding 16 feet in length, not above 7 inches in width, and not exceeding 2¾ inches in thickness, the 120	1 0 0	—
- - - exceeding 16 feet in length, and not exceeding 21 feet in length, and not above 7 inches in width, and not exceeding 2¾ inches in thickness, the 120	1 3 0	—
- - - exceeding 21 feet in length, not above 7 inches in width, or if exceeding 2¾ inches in thickness, the 120 . .	2 0 0	—
——— Battens imported into Ireland, *viz.*		
- - - 8 feet in length, and not exceeding 12 feet in length, not above 7 inches in width, and not exceeding 3¼ inches in thickness, the 120	8 6 3	—
- - - exceeding 12 feet in length, and not exceeding 14 feet in length, not above 7 inches in width, and not exceeding 3¼ inches in thickness, the 120	9 14 0	—
- - - exceeding 14 feet in length, and not exceeding 16 feet in length, not above 7 inches in width, and not exceeding 3¼ inches in thickness, the 120	11 1 8	—
- - - exceeding 16 feet in length, and not exceeding 18 feet in length, not above 7 inches in width, and not exceeding 3¼ inches in thickness, the 120	12 9 4	—
- - - exceeding 18 feet in length, and not exceeding 20 feet in length, not above 7 inches in width, and exceeding 3¼ inches in thickness, the 120	13 17 2	—
- - - exceeding 20 feet in length, not above 7 inches in width, and not exceeding 3¼ inches in thickness, the 120	34 6 1	—
——— Batten Ends, imported into Great Britain, *viz.*		
- - - under 6 feet in length, not above 7 inches in width, and not exceeding 2¾ inches in thickness, the 120	3 0 0	—

	Duty. £	s.	d.	Drawback. £	s.	d.
Wood,—*continued.*						
- - - under 6 feet in length, not above 7 inches in width, and exceeding 2¾ inches in thickness, the 120	6	0	0		—	
——— Batten Ends, of the growth and produce of any British possession in America, and imported directly from thence into Great Britain, *viz.*						
- - - under 6 feet in length, not above 7 inches in width, and not exceeding 2¾ inches in thickness, the 120	0	7	6		—	
- - - under 6 feet in length, not above 7 inches in width, and exceeding 2¾ inches in thickness, the 120	0	15	0		—	
——— Batten Ends, imported into Ireland, *viz.*						
- - - under 8 feet in length, not above 7 inches in width, and not exceeding 3¼ inches in thickness, the 120	4	14	5		—	
- - - under 8 feet in length, if exceeding 3¼ inches in thickness, the 120	9	3	1		—	
——— Battens and Batten Ends of all sorts, of the growth and produce of any British possession in America, and imported directly from thence, the 120	0	8	3		—	
——— Beech plank, 2 inches in thickness or upwards, the load containing 50 cubic feet	2	8	9		—	
- - - of all sorts, of the growth and produce of any British possession in America, and imported directly from thence into Ireland, the 120	0	8	4		—	
——— Beech Quarters, *viz.*						
- - - under 5 inches square, and under 24 feet in length, the 120	4	10	8		—	
- - - 5 inches square, and under 8 inches square, or if 24 feet in length or upwards, the 120	12	3	6		—	
- - - of all sorts under 8 inches square, of the growth and produce of any British possession in America, and imported directly from thence, the 120	6	16	3		—	
——— Boards, *viz.*						
- - - Beech Boards, *viz.*						
- - - under 2 inches in thickness, and under 15 feet in length, the 120	4	9	6		—	
- - - under 2 inches in thickness, and if 15 feet in length or upwards, the 120	8	19	0		—	
- - - Clap Boards, *viz.*						
- - - not exceeding 5 feet 3 inches in length, and under 8 inches square, the 120	6	2	0		—	
- - - of the growth and produce of any British possession in America, and imported directly from thence, the 120	0	12	4		—	
- - - Linn Boards, or White Boards for shoemakers, *viz.*						
- - - under 4 feet in length, and under 6 inches in thickness, the 120	6	16	6		—	
- - - 4 feet in length, or 6 inches in thickness or upwards, the 120	13	13	0		—	

Wood,—*continued.*	Duty. £	s.	d.	Drawback. £ s. d.
- - - Oak Boards, *viz.*				
- - - under 2 inches in thickness, and under 15 feet in length, the 120	18	1	0	—
- - - under two inches in thickness, and if 15 feet in length or upwards, the 120	36	2	0	—
- - - Outside Slabs, or Paling Boards, hewed on one side, not exceeding 7 feet in length, and not above 1½ inch in thickness, the 120	2	0	0	—
- - - Outside Slabs, or Paling boards, hewed on one side, exceeding 7 feet in length, and not exceeding 12 feet in length, and not above 1½ inch in thickness, the 120 .	4	0	0	—
- - - Outside Slabs, or Paling Boards, hewed on one side, exceeding 12 feet in length, or exceeding 1½ inch in thickness, are subject and liable to the duties payable on deals.				
- - - Outside Slabs, or Paling Boards, hewed on one side, of the growth and produce of any British possession in America, and imported directly from thence, *viz.*				
- - - not exceeding 7 feet in length, and not above 1½ inch in thickness, the 120	0	5	0	—
- - - exceeding 7 feet in length, and not exceeding 12 feet in length, and not above 1½ inch in thickness, the 120	0	10	0	—
- - - exceeding 12 feet in length, or exceeding 1½ inch in thickness, are subject and liable to the duties payable on deals.				
- - - Pipe Boards, *viz.*				
- - - above 5 feet 3 inches in length, and not exceeding 8 feet in length, and under 8 inches square, the 120 .	9	3	0	—
- - - exceeding 8 feet in length, and under 8 inches square, the 120 .	18	6	0	—
- - - of all sorts, exceeding 5 feet 3 inches in length, and under 8 inches square, of the growth and produce of any British possession in America, and imported directly from thence, the 120	0	[illegible]	6	—
- - - Wainscot Boards, *viz.*				
- - - the foot, containing 12 feet in length, and 1 inch in thickness, and so in proportion for any greater or lesser length or thickness . . .	0	4	0	—
——— Boards of all sorts, not otherwise enumerated or described, of the growth and produce of any British possession in America, and imported directly from thence, the 120	0	8	4	—
——— Bowsprits, *See* Masts.				
——— Deals, to be used in Mines, *viz.*				
- - - above 7 inches in width, being 8 feet in length, and not above 10 feet in length, and not exceeding 1½ inch in thickness, the 120	8	2	6	—

	Duty. £	s.	d.	Drawback. £ s. d.
Wood,—*continued.*				
——— Deals, imported into Great Britain, *viz.*				
- - - above 7 inches in width, being 6 feet in length, and not above 16 feet in length, and not exceeding 3¼ inches in thickness, the 120	19	0	0	—
- - - above 7 inches in width, above 16 feet in length, and not above 21 feet in length, and not exceeding 3¼ inches in thickness, the 120	22	0	0	—
- - - above 7 inches in width, above 21 feet in length, and not above 45 feet in length, and not above 3¼ inches in thickness, the 120	44	0	0	—
- - - above 45 feet in length, or above 3¼ inches in thickness (not being timber 8 inches square or upwards) the load containing 50 cubic feet	2	10	0	—
- - - and further, the 120	6	0	0	—
——— Deals of the growth and produce of any British possession in America, and imported directly from thence into Great Britain, *viz.*				
- - - above 7 inches in width, being 6 feet in length, and not above 16 feet in length, and not exceeding 3¼ inches in thickness, the 120	2	0	0	—
- - - above 7 inches in width, above 16 feet in length, and not above 21 feet in length, and not exceeding 3¼ inches in thickness, the 120	2	10	0	—
- - - above 7 inches in width, being 6 feet in length, and not above 21 feet in length, and exceeding 3¼ inches in thickness, the 120	4	0	0	—
- - - above 7 inches in width, exceeding 21 feet in length, and not exceeding 4 inches in thickness, the 120	5	0	0	—
- - - above 7 inches in width, exceeding 21 feet in length, and exceeding 4 inches in thickness (not being timber 8 inches square or upwards), the 120	10	0	0	—
——— Deals imported into Ireland, *viz.*				
- - - above 7 inches in width, and not exceeding 12 inches in width, and not exceeding 3¼ inches in thickness, *viz.*				
- - - 8 feet in length and not exceeding 12 feet in length, the 120 . . .	12	9	5	—
- - - exceeding 12 feet in length and not exceeding 14 feet in length, the 120	14	11	0	—
- - - exceeding 14 feet in length and not exceeding 16 feet in length, the 120	16	12	6	—
- - - exceeding 16 feet in length and not exceeding 18 feet in length, the 120	18	14	1	—
- - - exceeding 18 feet in length and not exceeding 20 feet in length, the 120	20	15	7	—
- - - above 7 inches in width and not exceeding 12 inches in width, and exceeding 3¼ inches in thickness, *viz.*				

Wood,—*continued.*	Duty. £	s.	d.	Drawback. £ s. d.
- - - 8 feet in length, and not exceeding 20 feet in length, the 120 . .	41	11	3	—
- - - above 7 inches in width, and not exceeding 12 inches in width, and not exceeding 4 inches in thickness, and exceeding 20 feet in length, the 120	51	9	2	—
- - - above 7 inches in width, and not exceeding 12 inches in width, and exceeding 4 inches in thickness, and exceeding 20 feet in length, the 120	100	6	1	—
——— Deal Ends, imported into Great Britain, *viz.*				
- - - above 7 inches in width, being under 6 feet in length, and not exceeding 3¼ inches inches in thickness, the 120	6	0	0	—
- - - above 7 inches in width, being under 6 feet in length, and exceeding 3¼ inches in thickness, the 120	12	0	0	—
——— Deal Ends, of the growth and produce of any British possession in America, and imported directly from thence into Great Britain, *viz.*				
- - - above 7 inches in width, being under 6 feet in length, and not exceeding 3¼ inches in thickness, the 120	0	15	0	—
- - - above 7 inches in width, being under 6 feet in length, and not exceeding 3¼ inches in thickness, the 120	1	10	0	—
——— Deal Ends, imported into Ireland, *viz.*				
- - - above 7 inches in width, and not exceeding 12 inches in width, and under 8 feet in length, *viz.*				
- - - not exceeding 3¼ inches in thickness, the 120	7	1	8	—
- - - exceeding 3¼ inches in thickness, the 120	13	14	8	—
——— Deals and Deal Ends, *viz.*				
- - - of all sorts, of the growth and produce of any British possession in America, and imported directly from thence into Ireland, the 120	0	8	3	—
- - - And further, on all Deals and Deal Ends imported into Ireland of the aforesaid lengths and thicknesses, but of the following widths, the additional duties following, *viz.*				
- - - If exceeding 12 inches in width, and not exceeding 15 inches in width, 25 per cent., or one fourth of the aforesaid rates.				
- - - If exceeding 15 inches in width, and not exceeding 18 inches in width, 50 per cent., or one half of the aforesaid rates.				
- - - If exceeding 18 inches in width, and not exceeding 21 inches in width, 75 per cent., or three fourths of the aforesaid rates.				
- - If exceeding 21 inches in width, 100 per cent., or an additional duty equal to the aforesaid rates respectively.				

Wood,—*continued.*	Duty. £	s.	d.	Drawback. £ s. d.
——— Firewood, not fit or proper to be used other than as such, *viz.*				
- - - the fathom, 6 feet wide and 6 feet high .	0	19	0	—
- - - of the growth and produce of any British possession in America, and imported directly from thence, the fathom, 6 feet wide and 6 feet high	0	0	10	—
——— Fir Quarters, *viz.*				
- - - under 5 inches square, and under 24 feet in length, the 120	18	2	7	—
- - - under 5 inches square, and 24 feet in length or upwards, the 120	27	0	0	—
- - - 5 inches square or upwards are subject and liable to the duties payable on fir timber.				
——— Fir Quarters, of the growth and produce of any British possession in America, and imported directly from thence, *viz.*				
- - - under 5 inches square, and under 24 feet in length, the 120	3	5	0	—
- - - under 5 inches square, and 24 feet in length or upwards, the 120	4	17	6	—
- - - 5 inches square or upwards, are subject and liable to the duties payable on fir timber.				
——— Fir Timber, *See* Timber.				
——— Handspikes *viz.*				
- - - under 7 feet in length, the 120	2	0	0	—
- - - 7 feet in length, or upwards, the 120 . .	4	0	0	—
——— Handspikes, of the growth and produce of any British possession in America, and imported directly from thence, *viz.*				
- - - under 7 feet in length, the 120	0	2	6	—
- - - 7 feet in length or upwards, the 120 . .	0	5	0	—
——— Knees of Oak, *viz.*				
- - - under 5 inches square, the 120	0	10	0	—
- - - 5 inches square, and under 8 inches square, the 120	4	0	0	—
- - - 8 inches square or upwards, the load containing 50 cubic feet	1	6	0	—
——— Knees of Oak, of the growth of any British possession in America, and imported directly from thence, *viz.*				
- - - under 5 inches square, the 120	0	2	0	—
- - - 5 inches square and under 8 inches square, the 120	0	15	0	—
- - - 8 inches square or upwards, the load containing 50 cubic feet.	0	5	0	—
——— Lathwood, *viz.*				
- - - in pieces under 5 feet in length, the fathom, 6 feet wide and 6 feet high .	4	5	0	—
- - - in pieces 5 feet in length and under 8 feet in length, the fathom, 6 feet wide and 6 feet high	6	16	0	—
- - - 8 feet in length and under 12 feet in length, the fathom 6 feet wide and 6 feet high.	10	4	0	—
- - 12 feet long or upwards, the fathom 6 feet wide and 6 feet high	13	12	0	—
——— Lathwood of the growth of any British possession in America, and imported directly from thence, *viz.*				

	Duty. £ s. d.	Drawback. £ s. d.
Wood,—*continued.*		
- - - in Pieces under 5 feet in length, the fathom, 6 feet wide and 6 feet high .	0 15 0	—
- - - in Pieces 5 feet in length or upwards, the fathom, 6 feet wide and 6 feet high . .	1 5 0	—
——— Masts, Yards, or Bowsprits, *viz.*		
- - - 6 inches in diameter, and under 8 inches, each	0 8 0	—
- - - 8 inches in diameter, and under 12 inches, each	1 2 0	—
- - - 12 inches in diameter or upwards, the load containing 50 cubic feet	2 15 0	—
——— Masts, Yards, or Bowsprits, of the growth of any British possession in America, and imported directly from thence, *viz.*		
- - - 6 inches in diameter, and under 8 inches, each	0 1 6	—
- - - 8 inches in diameter, and under 12 inches, each	0 4 0	—
- - - 12 inches in diameter or upwards, the load containing 50 cubic feet	0 10 0	—
——— Oak Plank, *viz.*		
- - - 2 inches in thickness, or upwards, the load containing 50 cubic feet	4 0 0	—
——— Oak Plank, of the growth of any British possession in America, and imported directly from thence, *viz.*		
- - - 2 inches in thickness or upwards, the load containing 50 cubic feet	0 15 0	—
——— Oak Timber, *See* Timber.		
——— Oars, the 120	14 19 3	—
- - - of the growth of any British possession in America, and imported directly from thence, the 120	0 19 6	—
——— Spars, *viz.*		
- - - under 22 feet in length, and under 4 inches in diameter, exclusive of the bark, the 120	2 8 0	—
- - - 22 feet in length or upwards, and under 4 inches in diameter, exclusive of the bark, the 120	4 5 0	—
- - - 4 inches in diameter, and under 6 inches in diameter, exclusive of the bark, the 120	9 0 0	—
- - - of the growth of any British possession in America, and imported directly from thence, *viz.*		
- - - under 22 feet in length, and under 4 inches in diameter, exclusive of the bark, the 120	0 9 0	—
- - - 22 feet in length or upwards, and under 4 inches in diameter, exclusive of the bark, the 120	0 16 0	—
- - - 4 inches in diameter, and under 6 inches in diameter, exclusive of the bark, the 120	1 15 0	—
——— Spokes for Wheels, *viz.*		
- - - not exceeding 2 feet in length, the 1,000	3 7 4	—
- - - exceeding 2 feet in length, the 1,000 .	6 14 8	—

	Duty. £	s.	d.	Drawback. £ s. d.
Wood,—*continued.*				
- - - of all sorts, of the growth of any British possession in America, and imported directly from thence, the 1,000 . . .	0	6	4	—
——— Staves, *viz.*				
- - - not exceeding 36 inches in length, not above 3 inches in thickness, and not exceeding 7 inches in breadth, the 120	1	3	0	—
- - - above 36 inches in length, and not exceeding 50 inches in length, not above 3 inches in thickness, and not exceeding 7 inches in breadth, the 120	2	6	0	—
- - - above 50 inches in length, and not exceeding 60 inches in length, not above 3 inches in thickness, and not exceeding 7 inches in breadth, the 120	3	0	0	—
- - - above 60 inches in length, and not exceeding 72 inches in length, not above 3 inches in thickness, and not exceeding 7 inches in breadth, the 120	4	4	0	—
- - - above 72 inches in length, not above 3 inches in thickness, and not exceeding 7 inches in breadth, the 120	4	16	0	—
- - - above 3 inches in thickness, or above 7 inches in breadth, and not exceeding 63 inches in length, shall be deemed Clap Boards, and be charged with duty accordingly.				
- - - above 3 inches in thickness, or above 7 inches in breadth, and exceeding 63 inches in length, shall be deemed Pipe Boards, and be charged with duty accordingly.				
——— Staves, being the growth of any of the United States of America, or of the growth of East or West Florida, and imported directly from thence respectively, not exceeding 1½ inch in thickness, shall be charged with one-third part only of the duties herein-before imposed on Staves.				
——— Staves, being the growth of and imported directly from the Ionian Islands, shall be charged at the same rate of duty as Staves of the growth of the United States of America, when imported directly from thence.				
——— Staves of the growth of any British possession in America, and imported directly from thence, *viz.*				
- - - not exceeding 36 inches in length, not above 3½ inches in thickness, and not exceeding 7 inches in breadth, the 120	0	2	0	—
- - - above 36 inches in length, and not exceeding 50 inches in length, not above 3½ inches in thickness, and not exceeding 7 inches in breadth, the 120 . .	0	4	0	—
- - - above 50 inches in length, and not exceeding 60 inches in length, not above 3½ inches in thickness, and not exceeding 7 inches in breadth, the 120 . .	0	6	0	—

Wood,—*continued.*	Duty. £ s. d.	Drawback. £ s. d.
- - - above 60 inches in length, and not exceeding 72 inches in length, not above 3½ inches in thickness, and not exceeding 7 inches in breadth, the 120 . .	0 8 0	—
- - - above 72 inches in length, not above 3½ inches in thickness, and not exceeding 7 inches in breadth, the 120	0 10 0	—
- - - not exceeding 1½ inch in thickness, shall be charged with one-third part of the duty herein-proposed on such Staves.		
- - - above 3½ inches in thickness, or above 7 inches in breadth, and not exceeding 63 inches in length, shall be deemed Clap Boards, and be charged with duty accordingly.		
- - - above 3½ inches in thickness, or above 7 inches in breadth, and exceeding 63 inches in length, shall be deemed Pipe Boards, and be charged with the duty accordingly.		
——— * Teake Wood, the load containing 50 cubic feet	1 10 0	—
- - - - - - - of the growth of any British possession in Africa, the load containing 50 cubic feet	0 10 0	—
——— Timber, *viz.*		
- - - Fir Timber, 8 inches square or upwards, the load containing 50 cubic feet . .	2 15 0	—
- - - Fir Timber, of the growth of any British possession in America, and imported directly from thence, 8 inches square or upwards, the load consisting of 50 cubic feet	0 10 0	—
- - - Oak Timber, 8 inches square or upwards, the load containing 50 cubic feet . .	2 15 0	—
- - - Oak Timber, of the growth of any British possession in America, imported directly from thence, 8 inches square or upwards, the load containing 50 cubic feet	0 10 0	—
- - - Timber of all sorts, not particularly enumerated or described, nor otherwise charged with duty, being 8 inches square or upwards, the load containing 50 cubic feet	1 8 0	—
- - - Timber of all sorts, not particularly enumerated or described, nor otherwise charged with duty, being of the growth of any British possession in America, and imported directly from thence, being 8 inches square or upwards, the load containing 50 cubic feet . . .	0 5 0	—
——— Ufers, *viz.*		
- - - under 5 inches square, and under 24 feet in length, the 120	18 2 7	—
- - - under 5 inches square, and 24 feet in length or upwards, the 120	27 0 0	—
- - - 5 inches square or upwards, are subject and liable to the duties payable on Fir Timber.		

	Duty. £	s.	d.	Drawback. £ s. d.
Wood,—*continued.*				
- - - Ufers of the growth of any British possession in America, and imported directly from thence, *viz.*				
- - - under 5 inches square and under 24 feet in length, the 120 . .	2	5	0	—
- - - under 5 inches square, and 24 feet in length or upwards, the 120	4	17	6	—
- - - 5 inches square or upwards, are subject and liable to the duties payable on Fir Timber.				
——— Wainscot Logs, *viz.*				
- - - - - 8 inches square or upwards, the load containing 50 cubic feet . . .	2	15	0	—
——— Wainscot Logs of the growth of any British possession in America, and imported directly from thence, the load containing 50 cubic feet	0	12	0	—
——— Wood unmanufactured, of the growth of any British possession in America, not particularly enumerated or described, nor otherwise charged with duty, for every 100*l.* of the value	5	0	0	—
——— Wood unmanufactured, not particularly enumerated or described, and on which the duties due on the importation are payable according to the value thereof, being of the growth of the British limits within the province of Yucatan in the Bay of Honduras, and imported directly from the said Bay, for every 100*l.* of the value	5	0	0	—
——— - - - unmanufactured, not particularly enumerated or described, nor otherwise charged with duty, for every 100*l.* of the value	20	0	0	—
——— * Teake Wood, or other Wood fit for ship-building, 8 inches square or upwards, the growth of any British possession within the limits of the East India Company's charter, the load containing 50 cubic feet, Free.				
Wool, *viz.*				
——— Beaver Wool, the lb.	0	1	7	—
- - - - cut and comb, the lb.	0	4	9	—
——— Bison or Buffalo Wool, the produce of, and imported directly from, any British possession, the lb.	0	0	4	—
- - - of any other place, or if otherwise imported, the lb.	0	0	6	—
——— Carmenia Wool, the lb.	0	0	1	—
——— Coney Wool, the lb.	0	0	2	—
——— Cotton Wool, or Waste of Cotton Wool, *viz.*				
- - - the produce of any British possession in America, and imported directly from thence, Free.				
- - - the produce of any British possession in America, not being imported directly from thence, and Cotton Wool, or Waste of Cotton Wool, the produce of any other country or place, for every 100*l.* of the value	6	0	0	—

	Duty. £	s.	d.	Drawback. £	s.	d.
Wool,—*continued.*						
——— Goat's Wool, or Hair, the lb.	0	0	1	—		
. - - - the produce of, and imported from, any British possession, Free.						
——— Hare's Wool, the lb.	0	0	2	—		
——— Lamb's Wool, *See* Sheep's Wool.						
——— Ostrich Wool, the lb.	0	0	6	—		
——— Polonia Wool, the lb.	0	0	6	—		
——— Red Wool, the lb.	0	0	6	—		
——— Sheep or Lamb's Wool, *viz.*						
- - - the produce of, and imported from, any British possession, Free						
- - - the produce of, or imported from, any other place, *viz.*						
- - - not being of the value of 1*s.* the lb. thereof, the lb.	0	0	0½	—		
- - - being of the value of 1*s.* the lb. or upwards, the lb.	0	0	1	—		
Woollens, *viz.*						
——— Manufactures of Wool not being Goat's Wool, or of Wool mixed with Cotton, not particularly enumerated or described, nor otherwise charged with duty, for every 100*l.* of the value	15	0	0	—		
Wreck, *See* Derelict.						
Yarn, *viz.*						
—— Cable Yarn, the cwt.	0	10	9	—		
—— Camel or Mohair Yarn, the lb.	0	0	3	—		
—— Grogram Yarn, the lb.	0	0	6	—		
—— Raw Linen Yarn, the cwt.	0	1	0	—		
—— Worsted Yarn, being of two or more threads, twisted or thrown, the lb.	0	0	6	—		
Zaffre, the lb.	0	0	1	—		
Zedoaria, the lb.	0	1	3	0	0	10

	Duty. £	s.	d.	Drawback.
Goods, Wares, and Merchandize, being either in part or wholly manufactured, and not being enumerated or described, nor otherwise charged with duty, and not prohibited to be imported into or used in Great Britain or Ireland, for every 100*l.* of the value	20	0	0	—
Goods, Wares, and Merchandize, not being either in part or wholly manufactured, and not being enumerated or described, nor otherwise charged with duty, and not prohibited to be imported into or used in Great Britain or Ireland, for every 100*l.* of the value . . .	10	0	0	—

Note.—All Goods, the produce or manufacture of the Island of Mauritius, are subject to the same duties as are imposed in this Table on the like Goods, the produce or manufacture of the British possessions in the West Indies.

All Goods, the produce or manufacture of the Cape of Good Hope, or the territories or dependencies thereof, are subject to the same duties as are imposed in this Table on the like Goods, the produce or manufacture of the British possessions with the limits of the East India Company's charter, except when any other duty is expressly imposed thereon.

TABLE OF DUTIES OUTWARDS,

Payable on Goods, Wares, and Merchandize, EXPORTED from the United Kingdom to Foreign Parts.

	Duty. £	s.	d.
Coals and Cinders usually sold by measure, *viz.*			
—— exported to the Isle of Man, the chaldron, imperial measure	0	1	6
—— exported to any British possession, the chaldron, imperial measure	0	1	6
—— exported to any other place, *viz.*			
- - - in a British ship, the chaldron, Newcastle measure	0	17	0
- - - in a ship not British, the chaldron, Newcastle measure	1	10	3
Coals and Cinders usually sold by weight, *viz.*			
——— exported to the Isle of Man, the ton	0	1	0
——— exported to any British possession, the ton	0	1	0
——— exported to any other place, *viz.*			
- - - in a British ship, the ton	0	5	9
- - - in a ship not British, the ton	0	10	0
Any Coals which shall have been screened through a riddle or screen, the bars of which not being in any part thereof more than three-eighth parts of an inch asunder, shall, on exportation from any part of Great Britain, be subject and liable to such and the like duties, and no other, as are or may be charged and payable on Culm exported from Great Britain to foreign parts.			
Culm, exported to the Isle of Man, the chaldron, imperial measure	0	0	6
——— exported to any British possession, the chaldron, imperial measure	0	0	6
——— exported to any other place, *viz.*			
- - - in a British ship, the chaldron, Newcastle measure	0	4	6
- - - in a ship not British, the chaldron, Newcastle measure	0	8	0
Skins, Coney, the 100 Skins	0	1	0
—— Hare, the 100 Skins	0	1	0
Wool of Hares and of Conies, the lb.	0	0	1
—— of Sheep or Lambs, *viz.*			
- - - - not being of the value of 1*s.* the lb. thereof, the lb.	0	0	0½
- - - - being of the value of 1*s.* the lb. or upwards, the lb.	0	0	1
Woollen Manufactures, *viz.*			
——— Woolfels, Mortlings, Shortlings, Yarn, Worsted, Wool-flocks, Cruels, Coverlids, Waddings, or other manufactures, or pretended manufactures, slightly wrought up or put together, so as that the same may be reduced to and made use of as Wool again, Mattresses, or Beds stuffed with combed Wool, or Wool fit for combing or carding, the lb.	0	0	1
The following duty is also payable on goods of the growth, produce, or manufacture of the United Kingdom exported from thence, whether subject to other export duty or not, *viz.*			
Goods, Wares, and Merchandize, of the growth, produce, or manufacture of the United Kingdom (except as herein-after mentioned,) exported to any port or place whatever, for every 100*l.* of the true and real value thereof	0	10	0

EXCEPT

Bullion.—Corn, Grain, Meal, Flour, Biscuit, Bran, Grits, Pearl, Barley, and Scotch Barley.—Cotton, Yarn, or other Cotton Manufactures.—Fish.—Linen, or Linen with Cotton mixed.—Melasses.—Military Clothing, Accoutrements, or

Appointments, exported under the authority of the Commissioners of his Majesty's Treasury, and sent to any of his Majesty's forces serving abroad.—Military Stores exported to India by the East India Company.—Salt.—Sugar, refined, of all sorts, and Sugar Candy.

Goods, Wares, and Merchandize, exported to the Isle of Man by virtue and under the authority of any licence which the Commissioners of his Majesty's Customs are or may be authorized and empowered to grant.—Any sort of Craft, Food, Victuals, Clothing, or Implements or Materials necessary for the British Fisheries established in the Island of Newfoundland, or in any of his Majesty's Colonies, Islands, or Plantations in North America, on due entry thereof, and exported direct to the said Colonies, Islands, or Plantations.—Wool.—Woollen Goods, or Woollen and Cotton mixed, exported to any port or place within the limits of the East India Company's charter.

TABLE OF DUTIES COASTWISE,

Payable on Goods, Wares, and Merchandize brought or sent Coastwise from one Port or Place to any other Port or Place within the United Kingdom, and of the Drawbacks to be allowed on the Exportation thereof.

	Duty. £	s.	d.	Drawback. £	s.	d.
Coals, Culm, and Cinders, except Charcoal made of Wood, *viz.*						
Coals, except Small Coals otherwise charged with duty:						
—— brought coastwise from any port or place in the United Kingdom into any port in England or Wales,						
- - - in case they be such as are most usually sold by weight, the ton	0	4	0	0	3	8
- - - in case they be such as are most usually sold by measure, the chaldron, imperial measure	0	6	0	0	5	6
—— brought coastwise from any port of the United Kingdom into any port in Ireland, the ton	0	1	7¼	—		
- - - and further, if brought into the harbour of Dublin, the ton	0	0	11	—		
Culm, to be used for burning lime, sent from any place within the limits of the port of Milford in the county of Pembroke, to any other place within the counties of Pembroke, Carmarthen, Cardigan, or Merioneth, the chaldron, imperial measure	0	0	6	—		
—— not having been so sent or charged with duty, brought coastwise from any port in the United Kingdom into any port in England or Wales, the chaldron, imperial measure	0	0	6	0	0	6
Cinders made of Pit Coal, brought coastwise from any port in the United Kingdom into any port in England or Wales, the chaldron, imperial measure	0	6	0	—		
Coals, Culm, and Cinders, *viz.*						
—— brought by the Grand Junction or Paddington Canals, nearer to London than the stone or post at or near the north-east point in Grove Park, in the county of Hertford, or brought down the river Thames nearer to London than the City's stone placed on the west side of Staines Bridge, in the county of Middlesex, the ton	0	1	0	—		

	Duty. s.	d.	Drawback. £	s.	d.
Coals, Culm, and Cinders,—*continued.*					
——— and a further duty of 1*s.* 3*d.* the ton, payable to the proper officer of customs, in lieu of the duty called Orphan's Duty, and of all other rates, dues, and duties payable to the corporation of London upon coal, culm, and cinders imported into the port of London, to be paid over to the said corporation at the end of every quarter.					
Coals shipped to be carried coastwise from the port of Newcastle-upon-Tyne to any other port in the United Kingdom, the chaldron, imperial measure	0	0 6	—		
——— Small Coals which have been screened through a screen or riddle, the bars of which not being in any part thereof more than three-eighths of an inch asunder, or such coals mixed with ashes, shipped to be sent coastwise from the ports of Newcastle or Sunderland to any port in England or Wales, the chaldron, imperial measure	0	1 0	—		

- - - not subject to the duty imposed upon coals brought coastwise.

Coals and Culm carried from Ellenfoot to Bank End, in the county of Cumberland, or from any other creek or place between Ellenfoot and Bank End aforesaid, provided bond be entered into, with a general condition for the due landing of such coals within the said limits;—Coals and Culm carried on the Monmouthshire Canal, or on any of the railways or tram roads connected therewith, and afterwards carried from any port or place to the eastward of the islands called The Homes, to any other port or place in or upon the river Severn; also to the eastward of The Homes, without passing to the westward of the said Islands, except in going to the port of Bridgewater, and without touching at any place to the westward of the said Islands;—Coals, Culm, and Cinders carried from any part of the Lancaster Canal, or any of the branches thereof, or from any port or place within the hundred of Lonsdale, in the county of Lancaster, into the Ulverstone Canal, across or along the bay or estuary separating the two canals;—Coals, Culm, Cinders, or Coked Coals, burnt from pit coal on which the proper duties shall have been paid, being again brought coastwise from any port or place in Great Britain to any other port or place in England or Wales, Duty Free.

	Duty. s.	d.	Drawback.
Slates, brought coastwise from one port to another port in Great Britain, delivered by tale, *viz.*			
- - - Doubles, not exceeding 13 inches in length or 7 inches in breadth, the 1,000 . .	0 6	0	—
- - - Ladies, exceeding 13 inches in length and 7 inches in breadth, and not exceeding 16 inches in length and 8 inches in breadth, the 1,000	0 13	0	—
- - - Countesses, exceeding 16 inches in length and 8 inches in breadth, and not exceeding 20 inches in length and 10 inches in breadth, the 1,000	1 2	6	—
- - - Duchesses, exceeding 20 inches in length and 10 inches in breadth, and not exceeding 24 inches in length and 12 inches in breadth, the 1,000	1 15	6	—
——— delivered by weight, *viz.*			
- - - Queen or Size Rag Slates, the ton	0 13	0	—
- - - Imperial or Milled Slates, the ton	0 15	6	—
- - - Slab Slates, the ton	0 13	0	—
- - - Block Slates, the ton	0 14	6	—
- - - Westmoreland Rag Slates, the ton . . .	0 14	6	—
- - - Slate or Slates not otherwise enumerated or described, for every 100*l* of the value thereof	25 0	0	—

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THE END.

R. CLAY, PRINTER, BREAD-STREET-HILL.